States & Federalism CJFMP

Notes

If you have any questions email one of us
Jake Lee--asiantown13@gmail.com
Gaby Delgado-- delgado.gabs@gmail.com
Colesy Cotter—colescotter@gmail.com

SHOUT OUT TO
Akshay for having to cut 25 extra uniqueness cards for us

There are some states CP cards in the case neg files that you can use

Go, Fight, Win
CFJMP(K)

States CP

Top Shelf

1NC Exploration Shell

Text: The 50 state governments and relevant sub-federal actors should _____.

States can sufficiently solve

Mineta 14
[By Norman Y. Mineta¶ Co-Chair, Joint Ocean Commission Initiative; ¶ Former Secretary of Commerce, Transportation "Time to Chart a New Course For the Health of Our Oceans" January 2014 Issue http://www.sea-technology.com/features/2014/0114/7_Mineta.php]JAKE LEE
Action three **is to support state and regional ocean and coastal priorities**. **Because ocean ecosystems span jurisdictional lines, it is imperative that** federal, state and tribal **governments work collaboratively at a multistate or regional scale to ensure more effective ocean management**. **One way to increase that kind of collaboration is through regional ocean planning, which enables more effective coordination of data across jurisdictions, greater engagement of ocean and coastal stakeholders**, and improved decision making about ocean and coastal resources and priority economic drivers. **Private sector engagement is critical to the success of these efforts and can lead to new partnerships and opportunities**, resulting in less conflict among competing uses. **The Joint Initiative calls on the administration and Congress to provide additional financial and technical assistance to support the continued success of these regional efforts.**

1NC Energy Shell

Text: The 50 state governments and relevant sub-federal actors should _____.

50 state collective action on energy production spurs federal modeling and is key to federalism

Rabe 11
(Policy Barry G. Rabe Arthur Thurnau Professor Gerald Ford School of Public Policy University of Michigan August 16, 2011Contested Federalism and American Climate http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1902998&http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1902998&http://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=4&ved=0CJYEEBYwAw&url=http%3A%2F%2Fpapers.ssrn.com%2Fsol3%2FDelivery.cfm%3Fabstractid%3D1902998&ei=7GbuT6PvF8ql8gPg7P2vDQ&usg=AFQjCNEIITSPrNZZxG0In8curYVGgat9cw)
State Positioning. **In anticipation of an expanded federal role, states began to position themselves** to influence federal policy, both **through associations representing all 50 states** as well as individual state attempts to shape the outcome of any future policy. Consequently, **one could begin to consider states, both collectively and individually, as strategic actors engaged in intergovernmental lobbying in search of most favored status as the federal government moved onto terrain that they had long dominated.** In some instances, this entailed state alliance with other entities, including industries and environmental advocacy groups. **Organizations that represent the views of all states** must of course contend with differences among their membership but generally **find consensus positions that allow them to take fairly uniform stands in attempting to influence federal policy**. Virtually all of these state-based entities took a fairly similar stance on possible expansion of the federal role in climate change, reflected in position papers, policy briefs, public workshops, and formal testimony aimed at the 111th Congress and the Obama Administration. **They** generally **tended to endorse intergovernmental strategies that would protect existing state policies and allow for continued state innovation.** They also sought to extract as much rent as possible, in the form of grants and other financial support, from the federal government to cover implementation costs, further promote their most promising renewable energy sources, and underwrite efforts to "adapt" to changing climates. Among those associations that represent elected state officials, for example, **the National Governors Association and National Conference of State Legislatures (NCSL) took generally similar positions.** This reflects some differences on issues such as vehicle emission standards, reflecting the regional divides noted above. But most other areas of climate change reflect a fairly uniform position, represented in a 2009 NCSL resolution that received overwhelming support: "**Federal legislation should not preempt state or local governments from enacting policy options that differ from federal choices or from enacting stricter or stronger measures**." Those organizations that represent state agencies with a common function, such as the Environmental Council of the States (environmental protection agencies), the National Association of Regulatory Utility Commissioners (electricity regulatory boards), **the National Association of State** Energy Officials (**energy departments**), and the National Association of Clean Air Agencies (state and local air quality units), **took similar stances**, though tailored to their particular area. In short, **these groups sought to protect state interests under contested federalism, whether giving states latitude to sustain existing policies or take additional steps in the future.** At the same time, some individual states began to break ranks and sought preferred treatment for themselves under any expanded federal policy. Those states that sustained relatively low patterns of emissions growth and high levels of policy development sought special recognition in any federal cap-and-trade policy. This included supplemental credits for reductions that took place before a federal program would begin, as had occurred in the 1990s during creation of an emissions trading system for sulfur dioxide. In the case of Wisconsin, a state with a heavy manufacturing base, relatively high per capita emissions, but a considerable record of policy development, officials lobbied through reports and Congressional hearings for policies that would be particularly beneficial to their state. That included full return to Madison of any revenues that Washington might collect from

Wisconsin under the auspices of cap and trade, flexibility in registering in-state forestry projects for carbon sequestration credits, and substantial federal support for Wisconsin's renewable energy research and development program. Like Wisconsin, states increasingly began to pursue a pair of strategies simultaneously in intergovernmental negotiations, taking both collective stands as well as ones tailored to their particular advantage. In response, **federal officials considering policy engagement must weigh how seriously they will consider these collective and individual state claims, given the different ways in which state and local interests are represented** in the two chambers of Congress **and the significant regional differences in energy production** and consumption that are so central to climate policy. In the House, California (with the lowest per capita rate of carbon emissions of any state) has more than fifty times the voting power of Wyoming (with the highest per capita rate of carbon emissions of any state), reflecting their respective populations. But in the Senate, the two states have identical voting power. These realities have long made the intersection of energy and environmental protection among the most contentious in American politics, given varied degrees of economic dependence between states on the extraction of fossil fuels and their use in meeting core energy needs (Lowry 2008). Any emerging federal policy must run this political gauntlet successfully, while also weighing the positions of the states against all other organized interests. Indeed, each interest is likely to prefer its own balance between federal and state authority in any emerging climate policy. **This raises the possibility of very distinct policy alternatives, each of which would tilt the intergovernmental system in very different ways.**

OSW

1NC 50 States

Text: The 50 state governments and relevant sub-federal actors should increase its development of offshore wind

State offshore wind push—wants the renewable energy sector to start
Gordon 12 [VP for Energy Policy at American Progress, April, Taking Action on Clean Energy and Climate Protection in 2012 -- http://www.americanprogress.org/wp-content/uploads/issues/2012/04/pdf/energy_solutions.pdf] JAKE LEE
Expedite permitting processes for offshore wind development in state waters Why it matters: Offshore wind is a commercially scalable source of renewable energy. Some of the best wind resources in the world exist in close proximity to some of the most densely populated regions in America, such as the northeast and Mid-Atlantic. **In Maine, Rhode Island, New Jersey, and Maryland, legislatures and governors are eager to tap into this resource for its potential clean energy contribution and the opportunity to establish a beachhead in their state for an industry with the potential to create hundreds of thousands of jobs,** according to "Untapped Wealth: Offshore Wind Can Deliver Cleaner, More Affordable Energy and More Jobs Than Offshore Oil," a 2010 study by the ocean protection nonprofit organization Oceana. **States only control ocean space out to three miles from their shoreline, which limits the potential size of wind farms in state waters. Yet the immense value of these installations as pilot projects is compounded by the relative ease of permitting—taking the federal government out of the process eliminates numerous hurdles. A concerted push from a state government to expedite its permitting process will allow that state to stake an early claim to "first in the nation" status for a demonstration project and provide a launching pad for a renewable energy industry with tremendous economic promise**.

Devoting authority to the states to do offshore wind solves – 2 ways

Powell 13
[Timothy Powell is a J.D. Candidate, Boston University School of Law, 2013; B.A. Environmental Economics, Colgate University, 2007 "REVISITING FEDERALISM CONCERNS IN THE ¶ OFFSHORE WIND ENERGY INDUSTRY IN LIGHT OF ¶ CONTINUED LOCAL OPPOSITION TO THE CAPE WIND ¶ PROJECT" 2013]JAKE LEE
Federal control over the regulatory process under the CZMA has not been a ¶ successful method of promoting the efficient development of offshore wind ¶ facilities. **Shifting control over the regulatory and permitting processes from ¶ the federal government to the individual coastal states has the potential to more ¶ efficiently allocate the United States' offshore wind energy resources in two ¶ ways. First, with regulatory and permitting authority in the hands of the states, ¶ lobbying efforts would be engaged in an environment of more direct political ¶ accountability: the state legislatures. Likewise, local opposition to permitting ¶ decisions would be mounted in only one forum: the state courts. Second, ¶ allowing states to craft their own offshore wind energy regulatory practices ¶ could foster competition among them to encourage project development where ¶ it is most desired, or stated equivalently, where it is least costly.**

State Control of OSW solves best

Powell 13

[Timothy Powell is a J.D. Candidate, Boston University School of Law, 2013; B.A. Environmental Economics, Colgate University, 2007 "REVISITING FEDERALISM CONCERNS IN THE ¶ OFFSHORE WIND ENERGY INDUSTRY IN LIGHT OF ¶ CONTINUED LOCAL OPPOSITION TO THE CAPE WIND ¶ PROJECT" 2013]JAKE LEE

While in general the federal government has significant interests in retaining regulatory control over federal waters, within the context of offshore wind energy there may be significant benefits to allowing greater state control over the permitting process. First, opposition from citizen groups, like that faced by the Cape Wind project, may be more efficiently addressed by allowing more localized control of regulations and permitting. Second, granting states complete control over permitting may increase competition among states to attract offshore wind energy developers and lead to a more efficient and desirable allocation of offshore wind energy facilities throughout the United States.

2NC Solvency: Wind

States solve better – federal incentives create a boom and bust environment

Kemmet 2k6
(Sasha Kemmet, 2006 WISE Intern, senior at Iowa State University studying electrical engineering, "Using Financial Incentives to Encourage Wind Power Project Development", IEEE, August 3, 2006.)
Current **financial incentives at the federal level for wind energy** include a production tax credit (PTC), accelerated depreciation, and project loan guarantees. PTCs are extremely effective in encouraging wind project development but delayed PTC renewal **has caused a "boom-and-bust" environment** in the wind industry which makes it more difficult for projects to receiving financing and good lending terms. **At the state level, government subsidized loans have been extremely effective in encouraging wind systemdevelopment. They reduce debt by offering lower interest rates and more favorable lending terms than commercial loans**.

States are key drivers of wind energy

Bird '05
(Lori, 7/8/2012, Energy analysis officer of the NREL, "Policies and market factors driving wind power developmentin the United States" National Renewable Energy Laboratory, Vol 33, 1401-1402)
Within the context of these broader market driversand Federal incentives, **State policies and markets, in many cases, have been instrumental in stimulating wind energy development.** Table 2 provides a summary andcomparison of policy incentives in the States examinedin this paper. Based on the experience of these **States**,the following policies and market **factors have been identified as key drivers of wind energy development at the State level**.

Solvency – Individual Engagement

States better for individual engagement – national politics are beholden to fossil fuel lobbies and disregard INDIVIDUALS. We're a better platform for ADVOCACY

Byrne 8
(Byrne, et al., In Peter Droege eds. Urban Energy Transition: From Fossil Fuels to Renewable Power. Oxford, UK: Elsevier Pps.27-53. Center for Energy and Environmental Policy Established in 1980 at the University of Delaware, the Center is a leading institution for interdisciplinary graduate education, research, and advocacy in energy and environmental policy. CEEP is led by Dr. John Byrne, Distinguished Professor of Energy & Climate Policy at the University. For his contributions to Working Group III of the Intergovernmental Panel on Climate Change (IPCC) since 1992, he shares the 2007 Nobel Peace Prize with the Panel's authors and review editors.)
The political momentum built in US cities, states and regions to initiate climate mitigation and related efforts **is to be contrasted with inaction by the US national governmentin addressing the climate challenge**. Support for climate protection can be found in **polling of Americans** which **points to** 83% support among the country's citizens for greater national leadership in addressing climate change, and **even deeper support for state andcommunity action to address climate concerns** (Opinion Research Corporation 2006). If the American people appear to support such initiatives, the question becomes why are states, cities and regions

leading the way, rather than the national government? **US national politics has for decades exhibited a troubling amenability to the interestsof fossil fuel and automaker lobbies** (Leggett 2001; Public Citizen 2005; NRDC 2001). A recent example of this influence can be found in the history of the National Energy Policy Development Group, which took input 'principally' from actors associated with such interests (US General Accounting Office (GAO) 2003). At the same time, the national administration has been noted for the presence of individuals with backgrounds in the auto, mining, natural gas, electric, and oil industries, in positions at the White House, the Environmental Protection Agency, and the Departments, respectively, of Energy, Commerce, and the Interior (Bogardus, 2004; Drew and OppelJr 2004; NRDC, 2001). **State-level politics may be able to obviate this**influence through their efforts **to allowa more direct citizen influence upon decision making.** For example, 23 **states permit citizens to petition for a direct vote** (Initiative and Referendum Institute 2007), **a strategy that has helped ensure the advancement of environmentally minded initiatives**within states in recent years, such as the State of Washington's enactment by ballot of an RPS proposal in 2006 (Initiative and Referendum Institute 2007).

2NC Solvency – Follow-on

States action causes federal adoption means we solve 100% of case and don't link to federal action key solvency deficits

-- Vertical policy diffusion – prefer this evidence it is specific to incentives and energy policy

Mann 2k11
(Roberta Mann, Professor And Dean's Distinguished Faculty Fellow, University Of Oregon School Of Law, "Business Law Forum Taxation And The Environment: Federal, State, And Local Tax Policies For Climate Change: Coordination Or Cross-Purpose?", Lewis And Clark Law Review, Summer 2011. 15 Lewis & Clark L. Rev. 369)

Several groups of researchers have examined the potential interactions between federal and state climate policies. n54 Andrew Aulisi [*377] and other researchers from the World Resources Institute examined case studies to determine when **leading state policies would "vertically diffuse" and be adopted by the national government**.n55**The most significant factors for successful vertical policy diffusion were the push** for diffusion **by state champions, policy learning by example and innovation, and the spillover effect**. n56**State officials** may **press for federal adoption of their policies because those policies may fail without expansion to the national level**, due to "competition with other states with conflicting policies or weaker commitments to the policy goal." n57 **State policies may demonstrate that a policy can be implemented and be effective. The spillover effect is "the extent to which the perceived benefits and costs of state policies cross over state lines to other states" or the nation**. n58**The results of vertical diffusion may be full or partial preemption of the issue by the federal government, issuance of grants or incentives** by the federal government to the states to perpetuate the activity, **or federal mandates, with or without funding.**n59 The researchers concluded that the RGGI cap-and-trade program contained all the significant vertical diffusion factors, including the somewhat less significant factor of business support for federal action. n60 The researchers predicted that the federal government is "likely to use partial preemption to respond to the RGGI ... standards." n61 The House-passed climate change bill (ACES) would have fully preempted existing regional cap-and-trade programs. n62 The choice of full preemption in the legislation may have been driven by the concerns of business constituents. Business interests have considerable influence on policymaking in the United States. n63 Business support for federal action is motivated by the desire for uniform standards, which enables businesses to avoid a patchwork of varying state rules that would increase compliance costs and create competitive advantages. n64

2NC States Solvency

East Coast states pushing for Offshore wind

Davis 13 [Aaron Davis covers D.C. government and politics for The Post and wants to hear your story about how D.C. works — or how it doesn't. "Maryland offshore wind plan likely to pass, but will it be built?" February 4, 2013 http://www.washingtonpost.com/local/md-politics/maryland-offshore-wind-plan-likely-to-pass-but-will-it-be-built/2013/02/04/b66d42c8-6bd6-11e2-8740-9b58f43c191a_story.html] JAKE LEE

Massachusetts approved a wind project off the coast of Cape Cod in 2010, but the development has been fiercely opposed by some local residents and remains tied up in lawsuits. Delaware, Rhode Island and New Jersey also have approved state incentives.¶ In Delaware, a contract that Mandelstam won fell through last year when his company could not secure financing. Rhode Island hopes to complete a demonstration project by next year. In New Jersey, a small project slated as a precursor to a 1,000-megawatt wind farm also remains tied up in regulatory issues.¶ O'Malley's new bill is modeled after the one approved in New Jersey.¶ Abigail Hopper, O'Malley's energy adviser, said many of the ambiguities that have led to years of delays in New Jersey have been addressed, so Maryland should be able to move quickly.¶ Yet Hopper readily acknowledges that she and others in O'Malley's administration also keep an eye on Capitol Hill, hoping a plan pushed by Sen. Thomas R. Carper (D-Del.) could cut out some of the guesswork that has made private investment in offshore wind a risky business. **Carper's plan would cement the industry's current 30 percent tax break until the first offshore wind farms are built.¶ "We need to provide the certainty to get these projects started," Carper said. "After that, the industry is on its own."**

Offshore wind is picking up speed—states are pushing

Salih 7/2 [Swara Salih is the Energy & Environment Center Leader, Roosevelt Institute's Columbia Chapter "Will Offshore Wind Pick up the Speed?" July 2, 2014 http://www.huffingtonpost.com/swara-salih/will-offshore-wind-pick-u_b_5549967.html] JAKE LEE

But there have been various state-level efforts at fostering offshore wind energy industries. In 2010, **Governor** Chris **Christie signed the bipartisan Offshore Wind Economic Development Act, which established an offshore wind renewable energy certificate (OREC) program to make financial assistance and tax credits available to businesses that could build the necessary infrastructure**. However, projects have encountered various bureaucratic impediments. This past March, **the New Jersey Board of Public Utilities (BPU) halted the construction of Fishermen's Energy, despite the project's guarantee of a $47 million federal grant from the DOE. The plant would need to be 2.8 miles off the coast of Atlantic City, and would cost a total of $188 million while providing 25 MW of electricity, enough to power 10,000 homes**. The BPU cited concerns that household payers would end up paying "hundreds of millions of dollars" for power and that the federal grants were "unsecured." **This past May, however, Fishermen's Energy received the federal grant, prompting them to appeal to the BPU to overturn their previous decision. Some suspect that the BPU has put less confidence in renewable utilities due to** Chris **Christie's faltering support for them**, ironic considering **he spearheaded the bipartisan legislation** in 2010.¶ Dominion Virginia was more fortunate, and bought a lease for 113,000 acres last September from the Department of the Interior (**DOI), aiming to provide energy to around 700,000 homes. However, Dominion has little intention of using all this acreage any time soon,** with the cost of offshore wind remaining three times as expensive as natural gas (a key commodity of Dominion). Dominion's senior vice president for alternative energy solutions Mary Doswell is on record saying that though offshore wind is a "large scale, sustainable resource," **Dominion would need to "work on the cost," and that the company is waiting on "technological advances" that would make construction cheaper**. Yet they are still working on two **6 MW offshore turbines, for which they have also received a $47 million grant from the DOE**.

These turbines would be 24 miles off the coast of Virginia Beach, and Dominion says that with regulatory approval, they could be operation by 2017 and provide electricity to 3,000 homes.¶ Cape Wind Associates LLC proposed **their project for a large-scale facility of 130 turbines off the coast of Cape Cod** in 2001, and the firm only received its permit in October 2010, following lengthy environmental reviews and inspections. The projected total capacity of the project is 468 MW, and is expected to generate 1600 gigawatt-hours/year. The Bureau of Ocean Management (BOEM) projects that this could generate enough power for tens of thousands of homes in Massachusetts. Despite these purported advantages the project has faced opposition from wealthy homeowners who claim it would ruin their views, businesses that fear its power rate increases, and fishermen who say it would interfere with their catches. Among these wealthy homeowners is William Koch, who has poured millions of dollars into derailing the project, allegedly to protect the view from his waterfront estate. **However, Cape Wind is readying its ocean construction in 2015 and plans to start distributing power by 2016,** having received nearly $1 billion in loans from Danish and Japanese companies. Unlike Dominion and Fishermen's Energy, it has not received a grant from the DOE, though it hopes to receive a $500 million loan guarantee from the department soon.¶ Despite these projects' impediments within their states, the federal government is making significant efforts to establish the infrastructure for offshore wind. **The DOI has recently increased the acreage it will lease by more than 742,000 acres, offshore Massachusetts, for commercial wind facilities -- this has nearly doubled the federal offshore acreage for commercial offshore wind projects. This action will also help Cape Wind, which will most likely buy some of these acres for their wind farm**. Although the costs remain high along with market uncertainties, investors, utilities, **and the public sector are working to build the infrastructure, making offshore wind power a more concrete possibility in the U.S.**

Devoting authority to the states to do offshore wind solves – 2 ways

Powell 13 [Timothy Powell is a J.D. Candidate, Boston University School of Law, 2013; B.A. Environmental Economics, Colgate University, 2007 "REVISITING FEDERALISM CONCERNS IN THE ¶ OFFSHORE WIND ENERGY INDUSTRY IN LIGHT OF ¶ CONTINUED LOCAL OPPOSITION TO THE CAPE WIND ¶ PROJECT" 2013]JAKE LEE

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States Solve

Powell 13 [Timothy Powell is a J.D. Candidate, Boston University School of Law, 2013; B.A. Environmental Economics, Colgate University, 2007 "REVISITING FEDERALISM CONCERNS IN THE ¶ OFFSHORE WIND ENERGY INDUSTRY IN LIGHT OF ¶ CONTINUED LOCAL OPPOSITION TO THE CAPE WIND ¶ PROJECT" 2013]JAKE LEE

Allowing states to control the permitting process pursuant to their existing ¶ CZMPs would also foster competition between the states, leading to a more ¶ efficient allocation of offshore wind energy facilities. Through the political ¶ process, state legislatures can craft their own policies reflecting their citizens' ¶ interests in pursuing offshore wind energy. In turn, firms wishing to develop ¶ offshore wind projects would be incentivized to do business

in states with ¶ more favorable policies toward development. In this manner, allowing ¶ individual states to encourage, or to discourage, **the development of offshore ¶ wind projects would improve efficiency and social welfare by incentivizing ¶ project allocation in the lowest cost area.**

States can do renewable projects—California and Oregon prove

Klass and Wilson 12 [Alexandra B. Klass is a Julius E. Davis Professor of Law, University of Minnesota Law School. Elizabeth J. Wilson is an Associate Professor of Energy and Environmental Policy and Law, Humphrey School of Public Affairs, University of Minnesota. "Interstate Transmission Challenges for Renewable Energy: A Federalism Mismatch" November 2012 Lexis] JAKE LEE

The situation in the West is perhaps more challenging than the Midwest. **Although areas of the West Coast have significant wind resources, the West has a much larger population to serve, and California's new renewable energy man-dates likely can only be fulfilled through significant wind development** and transmission buildout both within and out-side of California. Indeed, California is an electricity importer, and its demand affects much of the transmission [*1837] planning in the West. n180 As of August 2012, **California had 4,425 MW of wind energy capacity online, rank-ing it third in the nation for total installed MW** of wind energy. n181 However, due to its large electricity demand, in 2011 only 4.0% of California's electricity demand was generated by wind power, **ranking it sixteenth among the states in percentage of state energy derived from wind**. n182 Amended in 2011, **California has one of the most aggressive RPSs** in the nation. n183 With a deadline of January 1, 2012, to **set utility-specific targets, the standard requires 33% of electricity sold in California to be generated by renewable energy** resources by 2020. n184 To help reach this standard, California has implemented additional incentives to promote renewable energy, such as feed-in tariffs that set procurement rates for renewable energy at prices comparable to that of natural gas. n185 Additionally, **California has created a structure of three "buckets" to meet the statutory obligations of the RPS: (1) RPS-qualifying products generated within the state or a California balancing authority, (2) products that are used to ensure power quality and provide incremental power, and (3) unbundled RECs (where the electric power is used separately from the environmental benefit, for example when wind energy is generated and used in Oregon,** but a California utility purchases the REC). n186 To comply with the RPS, Bucket 1 must account for 50% of compliance products (increasing to 75% by 2017), and the cumulative percentage of Buckets 2 and 3 must be limited to 25%. n187 These restrictions could affect the demand for renewable energy and the need for transmission lines in [*1838] the West. California has also created the Renewable Energy Transmission Initiative ("RETI") to identify transmission projects required to meet the RPS goals and to bring together transmission stakeholders to create a comprehensive transmission plan for California. n188¶ Southern California Edison is planning the biggest transmission project in California's history: the Tehachapi Re-newable Transmission Project. It will transport wind energy from the Tehachapi area of Kern County to Southern Cali-fornia Edison's power grid, which serves 14 million people. The $ 3.5 billion line would be capable of carrying 4,500 MW. n189 The California Public Utility Commission ("CPUC") approved the first phase of the project in March 2007, and construction of that phase is underway. n190 The next phase involves 173 miles of transmission lines. n191 The project will be very important for linking renewable energy to California demand centers. In June 2011, Google announced that it would increase its investment in the Alta Wind Energy Center ("AWEC") in Tehachapi by providing another $ 102 million to finance the 168 MW Alta V Project. This adds to the $ 55 million Google has already invested in wind power in the area. n192 Also in June 2011, San Diego Gas & Electric announced large solar contracts, one of which **will connect to the grid through the Tehachapi Renewable Transmission Project. n193 Despite the CPUC's approval of the project, Chino Hills sued to enforce its ability to grant right-of-way property rights, and to deny the CPUC's exclusive jurisdiction in this area. The state trial court held in 2010 that the CPUC had exclusive jurisdiction**, the court of appeals affirmed that decision in September 2011, and the California Supreme Court denied [*1839] review in January 2012. n194 During the pendency of the appeals, however the CPUC stopped construction on the project for purposes of conducting additional review for the portion of the project through Chino Hills. n195¶ As an electricity importer, California will likely also need to rely on neighboring states to meet its renewable energy needs, though the current structure of the **RPS limits the amount that can be generated outside of California. n196 While Arizona and Nevada can provide solar energy in the future if certain major projects come online, California has historically looked to Oregon for more immediately available wind energy**. Indeed, Oregon has exported approximately half of its wind power to California since 1998. n197 As of June 2012, Oregon had 2,820 MW of wind power online, ranking it seventh in the nation, and deriving 7.1% of its electricity from wind. n198 In 2007, Oregon required its largest electric utilities (PacifiCorp, Portland General Electric, and the Eugene Water and Electric Board) to ensure 5% of their retail electricity was renewable by 2011, and the utilities met this standard. n199 The requirement increases to 15% by 2015, 20% by 2020, and 25% by 2025. n200 Smaller utilities will also have to meet renewable energy standards, but the percentage of

renewable energy is either 5% or 10% based on the size of the utility. n201 Companies in Oregon that do not comply with the **RPS are subject to a fine. n202 In 2010, Oregon began a pilot program for solar feed-in tariffs that offered payments by three participating utilities to [*1840] owners of solar energy systems for electricity produced by solar power.** n203 Through 2014, the payment rates are between $ 0.30 and $ 0.37/kWh. n204 Oregon also has both tax credits for renewable energy-equipment manufacturers n205 and "community renewable energy feasibility funds" n206 to support renewable energy development.¶ **While Oregon's policies have encouraged renewable growth, the state has not directly addressed the need for new transmission lines. n207 Similar to other states, "Oregon faces a growing schism between its lack of capacity to move en-ergy from renewable sources**, while current legislation, tax policies, and public demand are creating incentives and pressure to develop these renewable energy sources." n208 To address these issues, the Governor created the Oregon En-ergy Planning Council ("OEPC") in 2008. n209 **The first OEPC report, in December 2010, recommended "the state move forward with developing a comprehensive energy strategy to maintain its leadership in energy planning, conservation, and new renewable technology**." n210 The report made specific recommendations to improve Oregon's transmission line-siting process, including the creation of a stronger link between the state PUC and the state Energy Facility Siting Council to (1) better address the public's concerns regarding the [*1841] necessity of new transmission lines, (2) cre-ate new regulations to balance the objectives of multiple affected state agencies, (3) develop clear siting standards to make the application process both more predictable and better able to realize the public benefits of new transmission, (4) eliminate the lack of communication and multiple levels of review by different state agencies, and (5) create a "phased study approach" that allows applicants to move forward in their applications while various studies are being conducted. n211¶ As noted above, Oregon has exported approximately half of its wind-generated power to California since 1998. n212 As a result, Oregon imports much of its electricity from other Western states such as coal-fired power from Montana and Wyoming. n213 In the meantime, however, Google and others are in the process of developing the 845 MW **Shep-herd's Flat Wind Farm in Oregon, which is likely to be the largest in the world when completed. n214 The $ 2 billion pro-ject has received $ 100 million in funding from Google n215 as well as a $ 1.3 billion loan guarantee from the DOE. n216 The wind farm has received transmission rights**, and is slated to become operational by September 2012; n217 100% of the power generated from this farm will be exported to California. n218¶ The lack of transmission capacity in the Pacific Northwest region has become acute, and wind farms have been forced to curtail energy production on a rolling basis. n219 This occurred in the Pacific Northwest in 2011, with 100,000 MWh curtailed after a particularly wet winter, rapidly warming spring, and low electricity demand for that time of year. n220 The **massive amounts of hydroelectric power [*1842] swamped Bonneville Power Association's ("BPA") electric grid, causing BPA to curtail wind energy. n221 BPA insists that it did everything it could to incorporate wind into the sys-tem, but wind developers have built much faster than the Northwest Wind Integration Action Plan of 2007 predicted. n222 Wind farms filed a petition with FERC in the summer of 2011,** asking FERC to force BPA to honor its transmission contracts and undertake "negative pricing," which would involve paying utilities outside the region to shut down their own generation and take all of BPA's excess power. n223 BPA contended that such actions would increase its own cus-tomers' rates, which would not be fair since most power is sold out of state. n224 In December 2011, FERC ordered BPA to establish new policies to avoid curtailing transmission access for wind generation during periods of surplus hydro-power and found that BPA's actions constituted a discriminatory practice under the FPA. n225¶ **These developments in California and Oregon illustrate how states, even ones as large as California, cannot rely solely on their own renewable resources or transmission buildout to meet renewable energy goals. If Oregon is not suc-cessful in developing intrastate and interstate transmission, it will affect Oregon, California, and the entire Pacific Northwest**, as shown by the difficulties of utilizing the BPA grid. California is certainly acting as a "laboratory of de-mocracy" n226 with its aggressive **RPS, just as it has in many other areas of environmental protection, including vehicle emissions, smog, water-resource protection, and chemical regulation.** In those areas, however, California could experi-ment and make progress on its own. [*1843] In the area of renewable energy, because of its dependence on outside sources of electricity and a transmission system to bring that power to the state, it must rely on other states, **establish regional arrangements, seek federal assistance, and create an economic environment that encourages sufficient investment in transmission for the entire region.**

States Solve

Powell 13

[Timothy Powell is a J.D. Candidate, Boston University School of Law, 2013; B.A. Environmental Economics, Colgate University, 2007 "REVISITING FEDERALISM CONCERNS IN THE ¶ OFFSHORE WIND ENERGY INDUSTRY IN LIGHT OF ¶ CONTINUED LOCAL OPPOSITION TO THE CAPE WIND ¶ PROJECT" 2013]JAKE LEE

Allowing states to control the permitting process pursuant to their existing ¶ CZMPs would also foster competition between the states, leading to a more ¶ efficient allocation of offshore wind energy facilities. Through the political ¶ process, state legislatures can craft their own policies reflecting their citizens' ¶ interests in pursuing offshore wind energy. In turn, firms wishing to develop ¶ offshore wind projects would be incentivized to do business in states with ¶ more favorable policies toward development. In this manner, allowing ¶ individual states to encourage, or to discourage, **the development of offshore ¶ wind projects would improve efficiency and social welfare by incentivizing ¶ project allocation in the lowest cost area.**

Individual States Solvency

Connecticut is key to US offshore wind

ENR New York 09
[ENR New York serves New York, New Jersey and Connecticut's annual $25.9-billion construction marketplace. In every printed issue and every day on our website, we provide news, features and information about people and projects around the tri-state region. All facets of the development, design and construction marketplace use ENR New York to find authoritative news and information about the local scene. "Connecticut Contractor Lands Key Role in Planned Off-Shore Wind Farm" December 14, 2009 http://newyork.construction.com/new_york_construction_news/2009/1214_Off-ShoreWindFarm.asp] JAKE LEE
Trumbull, **Conn.-based COWI USA, Inc. has been selected as the prime consultant for the first phase of constructing an ocean-based anemometer tower**, **part of the Palmetto Wind Research Project** and a key step in researching the viability **of a proposed offshore wind farm.¶ COWI USA will lead a team in helping Santee Cooper, South Carolina's state-owned electric and water utility, select the appropriate anemometry equipment, platform, and foundation for an offshore meteorological tower**. Phase one of the project also includes an alternative analysis and concept design for the wind data collection system. The design will consider cost, bankability of data, system dependability, ease of installation, and environmental considerations. **Phase I is scheduled to be completed in February 2010.¶ "COWI brings substantial coastal and marine engineering experience to us,"** said Marc Tye, Santee Cooper vice president of conservation and renewable energy. "They have completed a significant number of similar quality projects, and they have a strong understanding of our project goals."¶ **COWI USA includes subsidiaries Ocean Coastal, Inc. also of Trumbull, Connecticut who will serve as this project's program manager**, and Ben C. Gerwick, Inc. of San Francisco, California **who will provide offshore foundation and construction expertise as well as AWS Truewind, LLC based in Albany, New York for wind data acquisition expertise and Newkirk Environmental, Inc. located in Mount Pleasant, South Carolina for environmental and regulatory assessment. COWI A/S based in Lyngby, Denmark, one of the most successful offshore wind farm foundation design firms in the world,** will provide technical expertise to the team on all phases of the project.¶ "**As there are currently no operating offshore wind farms in the US, this project is a unique opportunity for COWI USA to bring our company's worldwide offshore wind experience to Santee Cooper in order to help move forward with this important renewable energy resource," added COWI USA President Stanley M. White.**¶ Future phases of the **Palmetto Wind Research Project will include construction, permitting, and installing offshore platform and data gathering equipment, followed by data collection and analysis.**

States can do Offshore wind—Planning right now

Danko 5/12 [Pete Danko is a staff writer for Breaking Energy "Deepwater: Rhode Island Offshore Wind Farm Will Be First" May 12, 2014 http://breakingenergy.com/2014/05/12/deepwater-rhode-island-offshore-wind-farm-will-be-first/] JAKE LEE
"Steel in the water" – so far, it's been but a dream for U.S. offshore wind power, but developers of a project off Rhode Island are doubling down on their claim to be on course to make it happen. **Soon**.¶ Deepwater Wind is embarked on a plan – hatched in 2008 – **to build a 30-megawatt wind farm three miles off Block Island in Rhode Island waters,** and state officials last week signed off on

permits related to water quality, the installation of a transmission cable and onshore construction activities. In a statement, chief executive Jeffrey Grybowski called the permitting a "major step forward for" the five-turbine array.¶ "Momentum for the project is strong and we are moving closer to having 'steel in the water,'" Grybowski said, reiterating his belief that power will be coming ashore at Narragansett in 2016.¶ It does bear noting that in 2012, Deepwater had forecast that the Block Island turbines would be spinning in 2014. So stuff happens. But the company seems to be facing none of the well-financed challenges that have plagued Cape Wind project up the coast in Massachusetts, long expected to become the first U.S. offshore wind farm.¶ **Cape Wind's developers have been slogging away since 2001 and only now appear close to beginning construction of the 486-MW project**. They're eyeing commissioning in 2016, as well.¶ Meanwhile, three other offshore projects suddenly appear viable – not in 2016, but perhaps by 2017. That's the **U.S. D**epartment **o**f **E**nergy's **goal with the grants of up to $47 million apiece that it awarded last week to projects in New Jersey, Virginia and Oregon**.¶ The three all use novel technologies that the DOE hopes could lead to cheaper offshore wind. As it is, the stuff is expensive, at least on its face: **National Grid has agreed to long-term contracts to buy the Block Island power at 24.4 cents per kilowatt-hour, and a portion of Cape Wind's power output at 18.7 cents**/kWh. In both cases, the price will rise 3.5 percent annually, as well.¶ Riffgat Offshore Wind Farm Nears Completion¶ Deepwater will develop one of those DOE-backed projects, the 30-MW Oregon array that will use Principle Power's floating platform technology.¶ "**Deepwater Wind's Block Island Wind Farm is jumpstarting the East Coast offshore wind industry – where water depths are suitable for fixed foundations – the WindFloat Pacific project** will similarly act as a catalyst for large-scale floating offshore wind farms in the deep waters of the Pacific Ocean that are unsuitable for fixed foundations," the company said.¶ To get their full $47 million from the DOE – less than a quarter of the funding it will take to build the Oregon project – Deepwater and Principle Power will need to have a power purchaser and all their permitting in place within a year.¶ **Meanwhile, Deepwater isn't quite through the regulatory thickets in Rhode Island. According to the company, it still needs "assent from the Rhode Island Coastal Resources Management Council,** as well as approvals from the U.S. Department of the Interior's Bureau of Ocean Energy Management and the U.S. Army Corps of Engineers," but it anticipates having those permits in place in the next month or so.¶ **The Block Island Wind Farm is a stepping stone of sorts for Deepwater, which last summer won the first competitive lease sale for renewable energy in U.S. waters, consisting of two parcels off Massachusetts and Rhode Island**, **and plans to install up to 200 turbines there that could put out a gigawatt of power. The hope is to begin construction in 2017 and be in operation perhaps as early as the following year.**

Rhode Island is the best—pushing the offshore wind industry
Grybowski 4/3 [Jeffery Grybowski is chief executive of Deepwater Wind. "R.I. jumpstarts offshore wind industry" April 3, 2014 http://dwwind.com/deepwater-news/ri-jumpstarts] JAKE LEE
Securing cost-effective, clean and reliable energy sources is one of the most critical issues facing our nation. Most agree that a sensible, long-term energy plan for America must include a healthy mix of domestic fuel sources, including such renewable energy as wind and solar, as well as such traditional sources as natural gas. **In New England**, we do not have huge natural stores of traditional fossil fuels, but we do have many miles of coastline and some of the **East Coast's strongest offshore winds.¶ Today, 55 offshore wind farms are in operation off northern Europe, producing clean energy for hundreds of thousands of homes** across the Continent and powering a homegrown jobs engine. But the U.S. has yet to install even its first offshore wind farm. **That will change in the near future: Rhode Island is poised to become the epicenter of the new U.S. offshore-wind industry.**¶ That's because Deepwater Wind's Block Island Wind Farm is on schedule to become the first U.S. offshore wind farm installed in this country. **When complete, this five-turbine project, three miles southeast of Block Island, will produce enough clean energy to power 17,000 homes, for an estimated 20 years or more. It will also reduce electric rates on Block Island** by an estimated 40 percent and connect the island to the mainland electricity grid for the first time ever.¶ **This year, we hope to receive all of the state and federal approvals necessary for this project. We expect that initial construction will begin late next year, with wind turbines spinning off Block Island by the fall of 2015**.¶ To date, Deepwater Wind has invested $25 million in private funds in this project. **In all, we expect to invest over a quarter of a billion dollars — one of the largest private investments in Rhode Island history. And our investors bear all of the risk**

of the project's success — not the taxpayers.¶ We expect that the Block Island Wind Farm will be the first of several offshore wind farms built along the East Coast. Offshore wind represents the East Coast's best local, reliable and clean energy source for several important reasons. First, the winds off our coastline are among the strongest and steadiest for power generation in the nation. Where typical onshore wind farms might be expected to run at 35 percent efficiency in an average year, our analysis of the Block Island site leads us to predict that our efficiency will probably be more than 45 percent.¶ Second, offshore wind is the best energy choice for our environment. Wind power helps greatly to reduce the emission of harmful pollutants in our region. The Block Island Wind Farm will displace dirtier power sources, and reduce carbon-dioxide and other greenhouse-gas emissions.¶ Third, by generating our own power locally, we will create jobs locally. Right now, 35,000 people work in the offshore-wind business in northern Europe. Entire cities have been transformed into industrial hubs. We can do that here. That is why Deepwater Wind has paid hundreds of thousands of dollars to the state-owned Quonset Point to reserve space for our manufacturing and assembly hub. **The Block Island Wind Farm will create about 200 local construction jobs in addition to long-term maintenance jobs. This project will let Rhode Island acquire the skills needed to build more offshore wind projects in New England, creating many more jobs**.¶ Development of a first-of-its-kind project is not always easy or fast but more important than speed is getting the project right. **Starting in 2009, we launched a comprehensive $7 million suite of environmental surveys to ensure that construction and operation of the wind farm will not hurt wildlife, the environment or other users of the ocean. Moreover, Deepwater Wind contributed over $3 million to the state's ocean mapping effort. We are proud to have the support of many local and national environmental organizations.¶ Admittedly, the cost of power from this project will probably be higher than the cost of already built traditional fossil-fuels power plants today.** After all, this project is the first of its kind in the nation and, as a demonstration-scale project, we can't yet take advantage of economies of scale. But the impact on ratepayers is low, since this project will represent only about 1.5 percent of the power supply that the Ocean State needs. And as our industry grows and larger wind farms are built, pricing for offshore wind will go down, making it cost-competitive with other new sources of energy. But we can't get there without starting somewhere. **And the Block Island Wind Farm is that start.¶ Rhode Island is the sweet spot for offshore wind: Quonset Point, world-class wind resources, a long tradition of marine trades, and the leadership needed to get this started. The Block Island Wind Farm will put those assets to use, and jumpstart a new industry. We encourage all Rhode Islanders who support renewable energy and green jobs to add their voices to this important conversation**.

The East Coast States are ready to build offshore wind

DiSavino 11 [Scott DiSavino is a staff writer for Reuters "Deepwater to build first U.S. offshore wind farm" October 13, 2011 http://www.reuters.com/article/2011/10/13/us-deepwater-wind-idUSTRE79C0YC20111013] JAKE LEE

(Reuters) - **Deepwater Wind is racing to build the first U.S. offshore wind farm off Rhode Island and hopes to parlay that into a string of East Coast farms** that could partially replace embattled nuclear power plants.¶ **The privately held U.S. wind power developer plans to begin construction of the $205 million, 30-megawatt Block Island project in 2013 or 2014, ahead of a farm proposed by Cape Wind** which had been expected to be the nation's first offshore facility, according to Deepwater's CEO.¶ "**Believe it or not, the first offshore wind farm will probably happen in little Rhode Island,"** CEO William Moore told Reuters in an interview.¶ The energy generated by **the 30-megawatt Block Island project will be enough to power about 10,000 homes in Rhode Island**. **The company is planning other projects off the Atlantic Coast as well, with three 1,000-meagawatt projects currently in the works.¶ The company says a 1,000-megawatt offshore wind project will produce enough electricity for 350,000 homes.¶ Deepwater, majority owned by New York investment firm DE Shaw and minority owned by onshore wind developer First Wind, gained ground against other developers after Rhode Island picked the company, based in the state capitol city of Providence, as its preferred developer.¶ Rhode Island was not the first state to consider the clean energy prospects offered by offshore wind farms, but it moved decisively after concluding offshore wind power should be part of its energy mix.¶ Moore said**

Deepwater, as Rhode Island's preferred developer, last year submitted an unsolicited application with the U.S. Bureau of Ocean Energy Management (**BOEM) for a lease to build a separate 1,000-MW Deepwater Wind Energy Center in federal waters off Rhode Island and Massachusetts**.¶ "The federal government has said it will give consideration to states that have conducted these kind of preferred developer competitions in terms of their decision about who can lease the federal waters," Moore said.¶ **Moore said the second Rhode Island project would consist of about 200 turbines and could be connected via cables to the Connecticut, Rhode Island, Massachusetts and New York power grids.¶ "In order to get a competitive cost level**, we need to get to scale, which means 750 to 1,000 MW, and at that size you are better off trying to sell into multiple markets," **Moore said.¶ The company has already bid the Deepwater project into the Long Island Power Authority's request for proposals for new energy sources for its New York customers on Long Island.¶ EYES ON THE BIG APPLE¶ While Cape Wind still expects its 420-MW project in Massachusetts** to be the nation's first utility-scale offshore wind farm, **Deepwater hopes its small Block Island wind farm will be stepping stone to bigger projects**.¶ With New York Gov. Andrew Cuomo pressing to shut the 2,065-MW Indian Point nuclear power plant in 2013 and 2015 when its two reactors' operating licenses expire, Moore is proposing a 1,000-MW offshore wind project near New York City.¶ Entergy, the nuclear plant's owner, wants Indian Point to run for another 20 years and is seeking new licenses for the reactors from federal nuclear regulators.¶ "**There is a lot of excitement in New York because the possibility Indian Point may be retired in coming years," Moore said**.¶ "That has created a bit of an opening for offshore wind to participate in whatever process New York conducts to replace the energy from the nuclear plant."¶ Moore said Deepwater's Hudson Canyon Wind Farm will participate in the New York Power Authority's competition to select a developer, probably in 2013.¶ **In addition, Deepwater and its partner New Jersey energy company Public Service Enterprise Group have already filed for a federal lease to build their proposed 1,000 MW Garden State Offshore Energy project off New Jersey.¶ Moore expects New Jersey regulators will conduct a competition and select a preferred developer in 2012**. He also said BOEM could issue a lease for New Jersey later in 2012.¶ OBSTACLES¶ While the allure of clean wind energy is great, developers have faced several obstacles, including significantly higher costs than natural gas and even onshore wind power generators.¶ **It can cost about six times more money to build an offshore wind farm ($6,000 per kilowatt) compared to an efficient natural gas-fired power plant ($1,000 per kilowatt).¶ Once the gas plant is built it can be available 24 hours a day, seven days a week.** The wind farm is only available when the wind is blowing.¶ Moore said a 1,000 MW offshore wind project could cost about $4 billion to $5 billion.¶ **While proposed offshore projects are generally closer to the nation's biggest population centers and have access to more consistent, stronger winds, it costs about twice as much to build an offshore wind farm than an onshore wind farm.¶ Developers also must lock up customers before breaking ground. UK-based energy company National Grid, which owns utilities in New England, has agreed to buy all the output from Block Island under a 20-year agreement and half of the power from Cape Wind.**

Massachusetts can do offshore wind—5 warrants, plus overcome all the tech barriers on the solvency flow

CESA 13 [Clean Energy States Alliance is a national nonprofit coalition of state and municipal clean energy funds working with federal, regional, industry, and other stakeholders to promote clean energy markets and technologies "Massachusetts Opportunities for Offshore Wind Businesses" 2013 http://www.cesa.org/assets/2013-Files/OSW/DW-OSW-State-Profiles/Massachusettsfinal.pdf] JAKE LEE

Massachusetts has set an ambitious agenda aimed at becoming a national hub **for offshore wind development**. Adjacent to the largest offshore wind energy areas along the East Coast, Massachusetts is home to a robust venture capital community, hosts a concentration of world- class research and technology institutions, and possesses the nation's most highly skilled workforce, including a strong maritime industry sector. Specific advantages include: ¶ 1. **Massachusetts has developed nation-leading policies to support and incentivize offshore wind development in the federal waters**

just off its coast, including nation-leading green- house gas emissions reduction targets, an aggressive Renewable Portfolio Standard, and requirements for utilities to enter into long-term contracts for renewable energy. 2**. Massachusetts is home to a significant brain trust in renewable energy development – including two of the nation's leading academic institutions on wind research:** the University of Massachusetts **(UMASS) Amherst and the Massachusetts Institute for Technology, as well as the world's largest nonprofit oceanography center**, the Woods Hole Oceanographic Institute, and a leading ocean research institution in UMASS Dartmouth's School for Marine Science and Technology. 3**. Massachusetts is home to Cape Wind, which is expected to be America's first commercial offshore wind project. The project has received federal and state permits, and power purchase agreements for 77.5% of its generated power. As the project nears construction, Massachusetts is beginning to experience an accelerated migration of offshore wind industry talent, technology, capital, and manufacturing to the state**. 4**. Massachusetts has the largest offshore wind planning area of any state along the East Coast, totaling almost 1,200 square miles. The Massachusetts Offshore Wind Energy Area has attracted expression of interest from ten US and European offshore wind development companies** including Arcadia Offshore Massachusetts, Condor Wind Energy, Deepwater Wind New England, Energy Management Inc., enXco Development Corporation, Fishermen's Energy, Iberdrola Renewables, Neptune Wind, Offshore MW, and US Mainstream Renew- able Power Offshore. Additionally, Massachusetts is partnering with Rhode Island on the "Area of Mutual Interest," which spans 260 square miles. 5**. Massachusetts is a leader in ocean planning. In 2010, the state released the Massachusetts Ocean Management Plan, the nation's first comprehensive plan to protect critical marine resources** and set standards for the development of community and commercial-scale offshore wind energy. **In partnership with the Bureau of Ocean Energy Management, the Commonwealth has led a Task Force on Offshore Renewable Energy since** 2009 (see below). Further, Massachusetts is conducting science-based surveys of marine mammals, ¶ 2 ¶ avifauna, and benthic habitat in order to support the responsible siting of offshore wind projects. ¶ **Looking beyond these policies and planning efforts, Massachusetts is poised to help establish the infrastructure and workforce that will build and operate its offshore wind energy system:** ¶ 1. **Massachusetts is already the base for a growing national and international hub for offshore wind industry companies and is home to Siemens Offshore North America, Vestas Wind Systems Research & Development, Global Marine Energy,** TPI Composites, Mass Tank, American Superconductor, Second Wind, and Hi-Def, among others. **2. Massachusetts is home to the Wind Technology Testing Center, the largest enclosed wind blade testing facility in the world, capable of testing wind blades the length of a football field**. The project was made possible through funding from US Department of Energy and the Massachusetts Clean Energy Center. **3. Massachusetts is planning the construction of the New Bedford Marine Commerce Terminal, the first facility in the United States built specifically to support the assembly, construction, and deployment of offshore wind projects. Groundbreaking is expected to begin in the last quarter of 2012. 4. Massachusetts is partnering with the development community, industry and academia to drive down the cost of offshore wind through advanced technology demonstration projects, as well as monitoring and analysis of first generation projects as they are installed.** ¶ Further, Massachusetts is an excellent place to do business for companies in technology- oriented industries. Perhaps most notably, the state is a center for innovation and has helped incubate the computer, biotechnology, and clean energy industries. **To serve growing companies, Massachusetts hosts a strong financial services sector that provides expertise, funding, and assistance to new enterprises.** Because Massachusetts has a higher percentage of college graduates than any other state, companies can draw on a skilled, experienced, technical work- force with strengths in such key fields as machine tooling, marine technology, and engineering. **The state offers an outstanding quality of life, which attracts talent from across the globe. Finally, Massachusetts offers direct flights to all East Coast cities** and most European capitals. ¶ **Massachusetts-based private sector**

entities especially relevant to the offshore wind industry include the US Offshore Wind Collaborative (www.usowc.org), a nonprofit organization that facilitates information sharing among stakeholders interested in offshore wind development in the United States, especially along the Atlantic coast, and the New England Clean Energy Council (www.cleanenergycouncil.org), which provides services to and advocacy for the state's and the region's rapidly growing clean energy industry.

Maryland pushing for offshore wind—other states pushing as well

Davis 13 [Aaron Davis covers D.C. government and politics for The Post and wants to hear your story about how D.C. works — or how it doesn't. "Maryland offshore wind plan likely to pass, but will it be built?" February 4, 2013 http://www.washingtonpost.com/local/md-politics/maryland-offshore-wind-plan-likely-to-pass-but-will-it-be-built/2013/02/04/b66d42c8-6bd6-11e2-8740-9b58f43c191a_story.html] JAKE LEE

After years of trying, **Maryland Gov. Martin O'Malley is poised to win approval from state lawmakers in the coming weeks for a field of towering windmills in the Atlantic Ocean**.¶ But the tortured process of garnering support has left O'Malley (D) with a project so small **— one able to generate just half the energy of a single power plant — that developers and banks probably won't take the financial risk, experts predict.**¶ That would leave Maryland in the same position as several other states**, including Virginia, whose plans for offshore wind projects have been stalled by bureaucratic, financial and legal challenges**. **Not a single wind farm has been built in the Atlantic, although at least six have been proposed**.¶ In Maryland, developers say they don't think they could get necessary financing because **the project would be too costly, given its reduced size and the scaled-back subsidy from Maryland households**.¶ Peter Mandelstam, a leading offshore wind developer, said that despite O'Malley's commitment, **the finances of the governor's plan "may make it difficult or, in a worse-case scenario, impossible to build a project off the coast of Maryland**."¶ (Laris Karklis/The Washington Post/The Washington Post)¶ Nationally, offshore wind energy has for years drawn widespread support among environmentalists and others, **who say that it is a sustainable alternative to coal and gas. But it has proven enormously difficult to get the nascent wind industry up and going.¶ In Virginia, the state legislature in 2010 established an offshore wind development authority, but no subsidy program**. The federal government expects to soon auction off an area about 27 miles off of Virginia Beach for turbines. But without billions in tax incentives or a subsidy to get the project rolling, regulators expect it will be a decade before a project comes to fruition.¶ O'Malley has rejected dire predictions that **Maryland's offshore wind project will never be built and has continued to push for the legislation**.¶ But in announcing his third attempt to pass offshore wind legislation late last month, the governor acknowledged the difficulties that remain before his vision is a reality.¶ "**There's a saying in the Koran that everything is possible in God's time, but nothing is for sure," he said in response to a question about whether the project could begin in 2017, as his bill allows.¶ To win support from some lawmakers**, O'Malley has embraced a financing model involving renewable energy credits that is unproven in the risky realm of offshore wind. To win over others, he has limited the cost of the subsidy to about $1.50 a month per household. The subsidy will amount to $1.7 billion over 20 years, in 2012 dollars.¶ Developers and industry analysts say those and other concessions will make the project reliant on further federal tax incentives or help from other states to make it profitable.¶ O'Malley's initial plan was introduced just weeks after he was **decisively reelected in 2010. Haggling over the issue drained some of the momentum from the start of his second term, and lawmakers declined to even bring it to a vote.¶** Analysts said at the time that the governor's proposed subsidy to the industry would cost ratepayers twice as much as his staff had suggested to lawmakers.¶ Coming from O'Malley, who first won the governor's office on a promise to lower residents' electricity bills, the rate increase was seen as a reversal. **Lawmakers also grew skeptical after learning that O'Malley's former chief of staff was involved in one of eight bids to become the developer and get the subsidy.¶** To assuage concerns raised by utilities, O'Malley jettisoned a revenue model that banks rely on to fund nearly all on-land U.S. wind energy projects: a process that requires energy providers to purchase wind energy at a price set high enough for developers to turn a profit.¶ Maryland would instead insert itself in the process of buying and selling renewable energy credits, a subsidy method largely **untested on such a large scale.¶ In addition, to secure what might be crucial votes from a handful of African American lawmakers, the governor added millions in costs to help minority businesses gain a foothold in the industry.¶ At a news conference O'Malley called last month to announce his latest legislation, the governor painted a**

picture of a field of giant windmills, each as tall as the Washington Monument, rising 10 miles off the coast of Ocean City.¶ The site of the windmills — the tips of which might barely be seen from shore — would become a bustling construction area, employing more than 800 people. **When built, he said, the project would be like a gleaming beacon for the state's fight against climate change.¶ But when pressed by reporters, O'Malley acknowledged that he is now less optimistic that offshore wind development could begin as quickly as he hoped**.¶ The governor also said that, given the apparent need for the industry to develop big projects that can gain cost advantages with size, he was no longer certain that any state on its own could succeed in spurring development of offshore wind energy.¶ "I don't believe any one state can do this by itself," O'Malley said. "Quite frankly, it will be very difficult" for a developer to meet the constraints set out in Maryland's bill, he said.¶ Still, in advance of the bill's first hearing Tuesday, O'Malley cast in grand terms the need for the subsidy and for the state to take a risk on green energy. He said the science of climate change shows it will be necessary for human survival.¶ "I do know this," O'Malley said. "If **we do nothing, large chunks of Maryland will be underwater in the foreseeable future. There will be drought, there will be famine and human pain, suffering and displacement — that's the one thing we really do know for sure; 98.99 percent of all scientists agree."¶ Massachusetts approved a wind project off the coast of Cape Cod in 2010, but the development has been fiercely opposed by some local residents and remains tied up in lawsuits. Delaware, Rhode Island and New Jersey also have approved state incentives.¶ In Delaware, a contract that Mandelstam won fell through last year when his company could not secure financing. Rhode Island hopes to complete a demonstration project by next year. In New Jersey, a small project slated as a precursor to a 1,000-megawatt wind farm also remains tied up in regulatory issues.**¶ O'Malley's new bill is modeled after the one approved in New Jersey.¶ Abigail Hopper, O'Malley's energy adviser, said many of the ambiguities that have led to years of delays in New Jersey have been addressed, so Maryland should be able to move quickly.¶ Yet Hopper readily acknowledges that she and others in O'Malley's administration also keep an eye on Capitol Hill, hoping a plan pushed by Sen. Thomas R. Carper (D-Del.) could cut out some of the guesswork that has made private investment in offshore wind a risky business. **Carper's plan would cement the industry's current 30 percent tax break until the first offshore wind farms are built.¶ "We need to provide the certainty to get these projects started," Carper said. "After that, the industry is on its own."**

OTEC CP

1NC Hawaii CP

Text: The Government of Hawaii should increase funding to the Natural Energy Laboratory of Hawaii Authority for research and development of Ocean Thermal Energy Conversion technology and provide grants to companies to test Ocean Thermal Energy Conversion facilities offshore.

NELHA can demonstrate OTEC

Hawaii Clean Energy Initiative 11
[The Hawai'i Clean Energy Initiative is charting a new path toward an energy-independent future for Hawai'i. Today, imported oil supplies 90% of Hawaii's energy. "NELHA seeking OTEC developer" October 14, 2011 http://www.hawaiicleanenergyinitiative.org/imported-20101004182628/2011/10/14/nelha-seeking-otec-developer.html] JAKE LEE
(Pacific Business News) **The N**atural **E**nergy **L**aboratory of **H**awaii **A**uthority **is** seeking **a developer to build a 1 megawatt O**cean **T**hermal **E**nergy **C**onversion **plant on six acres at its ocean**, science and technology park in Kailua-Kona on the Big Island at a cost of $30 million.¶ **NELHA's original purpose was to develop ocean thermal energy, which converts solar radiation to electric power by harnessing** the difference in temperature between the ocean's warm surface water and its cold depths. It operated a small facility in the 1990s, but it has since closed. Undeterred, **NELHA officials say the site of the proposed plant is one of the only locations in the world capable of supporting this effort**.¶ Although this is not the first time NEHLA has pushed for such a project, it is the first time it has come up with an official request for proposals document for developers that would finance, build and operate an OTEC power plant of this scale.¶ "We think it's a good thing that we're publicly saying 'yes,' please contact us," **NELHA Executive Director Greg Barbour told PBN. "We just want to know what else is out there**, and who can make this happen."¶ The selection criteria for interested firms include:¶ • **Experience, qualifications and track record relevant to the OTEC facility being considered. This includes all previous experience with OTEC research and development.**¶ • **General technical approach and plans to meet the requirements of the RFP, including innovation and continued technology improvements to the project.**¶ • **Alternative uses for seawater and power from the OTEC facility. Due to the limited amount of seawater available to other NELHA clients at the site, it is important that consideration be given to downstream uses of water** and power that will benefit other NELHA clients. It is important to note that NELHA will not be purchasing power from the OTEC facility.¶ • Evidence that the firm or agency has the ability to secure financing for renewable-energy projects.¶ "**NELHA's original and ongoing mission is to continue the development of renewable-energy technologies**," Barbour said. "In this regard, we have determined that there is a need to further the advancement of the OTEC technology, and **NELHA's 55-inch surface and deep seawater distribution system is the only seawater system in the world today capable of supporting the operational and thermal requirements of a 1 megawatt OTEC** electric power plant."¶ But even as NELHA sees much potential in this proposed project, there are those, including Makai Ocean Engineering, that are doubtful.¶ Makai Vice President Reb Bellinger, whose company partnered with **Lockheed Martin to build an OTEC test facility at NELHA that was unveiled in July**, told PBN he doesn't think the 1 megawatt project will ever happen, mainly because of finance issues.¶ "We won't respond to the request for proposals," he said. "**They'll [NELHA] get responses, but not real credible ones." NELHA officials say they have received lots of interest, but so far no formal proposals.**¶ **Luis Vega,** manager of the National Marine Renewable Energy Center at the University of Hawaii, thinks the project has potential.¶ "I think it's good to have a working plant for public relations reasons," said Vega, who ran a 210-kilowatt OTEC plant at **NELHA in the 1990s that has since closed. "Investors like to see projects working and see it in action."**¶ **Vega does acknowledge that there are challenges associated with these types of plants**.¶ "Right now they have a system there to bring up water for tenants to use, but that system isn't good enough to operate this plant," he

said.¶ No commercial-scale OTEC pumps exist in **Hawaii today, but NELHA estimated that 10 OTEC plants producing 100 megawatts of electricity could power all of Oahu.¶ According to Bellinger, the biggest challenge for making OTEC** work in general is adequate funding.¶ He said Makai Ocean Engineering's goal is to get the technology to a point where a $1 billion commercialized plant could be financially viable, but with its test facility just getting started the company is too far away to make any predictions.¶ "**We feel confident that we will be able to get substantial proposals to build this plant," Barbour said. "If we weren't serious about it, we wouldn't put it out there."¶ The submission deadline for proposals to build this new initiative for a 1 megawatt OTEC plant at NELHA** is Oct. 31.

Solvency: OTEC (Hawaii)

Hawaii can demonstrate OTEC—has enough funds

DistinctEnergy 13

[DistinctEnergy is a nonprofit association founded in 1909. Membership includes district energy and CHP system managers, engineers, consultants and equipment suppliers from 25 countries. "Makai receives funding to build commercial, 100kWe OTEC turbine generator at Kona, Hawaii" November 13, 2013 http://www.districtenergy.org/blog/2013/11/13/makai-receives-funding-to-build-commercial-100kwe-otec-turbine-generator-at-kona-hawaii/

Makai Ocean Engineering has received a $3.6 million contract **from the Hawaii Natural Energy Institute and the Office of Naval Research for research and design of a commercial marine renewable energy system known as** Ocean Thermal Energy Conversion, or **OTEC. Makai will perform this work at their Ocean Energy Research Center, located in Kailua-Kona, Hawaii,** which is the largest OTEC research facility in the world. Makai Ocean Engineering is a member of the International District Energy Association (IDEA)¶ OTEC test facility in Kona, **Hawaii¶ Makai will convert this heat exchanger test facility at Kailua-Kona, Hawaii into an OTEC prototype that will be connected to the public grid.** A 100kWe capacity turbine generator will be installed on top of the structure.¶ Makai will work on two initiatives to serve the ultimate goal of making commercial OTEC a reality:¶ **Designing, manufacturing and testing an improved heat exchanger for OTEC, and¶ Installing a turbine generator on the existing heat exchanger test facility at Kona to create an OTEC prototype** and connecting power from this plant to the electric grid on the Island of Hawaii.¶ Because heat exchangers make up about one-third of the cost of an OTEC plant, **Makai will develop designs for an OTEC heat exchanger that is high-performance, low-cost, and corrosion-resistant**. The goal is a product that is essential to developers of OTEC and valuable for other industries that use marine heat exchangers.¶ In addition, Makai will install a 100-kilowatt capacity turbine generator on the existing heat exchanger test structure at the Ocean Energy Research Center to generate OTEC power onto the local grid in mid-2014. **This turbine will make Makai's Ocean Energy Research Center the largest operational OTEC plant in the world, and the first closed-cycle OTEC plant ever connected to a U.S. electrical grid. By operating the OTEC plant, Makai** will gain operational knowledge that will aid in the design of future utility-scale power plants.¶ OTEC holds great promise because the tropical ocean is earth's largest solar collector. According to Dr. Joseph Huang, a senior scientist at the U.S. National Oceanic and Atmospheric Administration, "If we can use one percent of the energy [generated by OTEC] for electricity and other things, the potential is … 100 to 1,000 times more than the current consumption of worldwide energy. The potential is huge. There is not any other renewable energy that can compare with OTEC." **Makai notes that OTEC is unique among renewables because the technology can provide large quantities of base load (constant) electricity. France, Korea, Japan, and China also have active OTEC development programs.¶ Makai Ocean Engineering, Inc. is a diversified ocean technology and engineering firm based in Hawaii, providing engineering products and services worldwide since 1973**. Makai's specialties include submarine cable software and services, marine pipelines, **Seawater Air Conditioning (SWAC), Ocean Thermal Energy Conversion (OTEC), underwater vehicles, and general marine engineering and R&D.¶**

Hawaii can overcome the barrier for OTEC—has the money and the technology

Daly 11

[John Daly is the chief analyst for Oilprice.com, Dr. Daly received his Ph.D. in 1986 from the School of Slavonic and East European Studies, University of London. While at the Central Asia-Caucasus Institute at Johns Hopkins University's Paul H. Nitze School of Advanced International Studies, where he is currently a non-resident scholar, in 199 he founded The Cyber-Caravan, which

continues today under the title, The Central Asia-Caucasus Analyst. He subsequently served as Director of Programs at the Middle East Institute in Washington DC before joining UPI as International Correspondent. "Hawaii About to Crack Ocean Thermal Energy Conversion Roadblocks?" December 5, 2011 http://oilprice.com/Alternative-Energy/Renewable-Energy/Hawaii-About-To-Crack-Ocean-Thermal-Energy-Conversion-Roadblocks.html] JAKE LEE

Hawaiian efforts to move towards renewable energy have a powerful ally in the form of Mark Glick, chief administrator of the State Energy Office, part of **the Department of Business, Economic Development and Tourism.** **By 2030 Glick's office hope to implement policies allowing Hawaii to achieve 70 percent reliance on clean energy.** There are a number of projects already under development that could assist the archipelago to reach its goals.

But, Glick is under no illusions about the problems Hawaii faces in accomplishing these goals. During an interview last month with Honolulu Civil Beat, when asked about the biggest challenges facing **Hawaii in switching to renewable energy** Glick replied, "Our remoteness and market/population size limit our options. **We don't have the ability to stabilize the grid for higher concentrations of RE through interstate transmission of electricity as is the case on the mainland.** And the lack of other conventional fuels means that we're stuck with expensive diesel and fuel for power generation for whatever we don't produce from renewable means."

The more well known renewable energy sources – solar, wind and biomass, all have their pluses and minuses for development in Hawaii. **But there is a renewable technology being developed in America's 50th state which savvy investors should keep a weather eye on.** Ocean Thermal Energy Conversion (**OTEC) utilizes temperature differentials between deep, cold ocean water and warm, tropical surface waters to run a heat engine to produce electricity.** It is in deep tropic waters that **OTEC offers the greatest possibilities**, as it is there that the temperature differentials are highest, with surface waters often reaching up to 80 degrees Fahrenheit, while deep water can be as low as several degrees above water's freezing temperature of 32 degrees Fahrenheit. Heat from the warm surface water is used to vaporize ammonia, which turns a turbine to drive a generator to produce electricity.

OTEC has the potential to offer global amounts of energy that are 10 to 100 times greater than other ocean energy options such as wave power and unlike solar and wind power, OTEC plants can operate continuously providing a base load supply for an electrical power generation system. Energy specialists estimated that that 10 **OTEC plants producing 100 megawatts of electricity could power all of Oahu.**

But if that's the good news the downside is that OTEC facilities have a typical conversion rate of 3-4 percent, as opposed to controversial coal or oil steam fired plants, whose temperature variants of up to 500 degrees can produce thermal conversion efficiency rates of 35-40 percent.

The idea has a long genesis, with the theory first being proven in the 1930s by Frenchman Georges Claude, who deployed a small OTEC plant in Cuba. In the 1970s during the post 1973 Arab-Israeli War, which caused oil prices to triple, the federal government poured $260 million into OTEC research, which saw **Lockheed Martin begin to cooperate with Oahu-based Makai Ocean Engineering. After Ronald Reagan won the 1980 presidential election, federal OTEC funding essentially ceased.** **Makai Ocean Engineering has soldiered on however, and over the past three years, surging hydrocarbon energy prices, rising environmental concerns and new U.S. Department of the Navy energy policy have led to government and commercial support to improve key OTEC technologies,** which among other things caused Makai Ocean Engineering and **Lockheed Martin to rekindled their earlier OTEC collaboration of nearly forty years previously.** **That partnership in July led to the opening by the** Natural Energy Laboratory of Hawaii Authority (**NELHA) of a new testing facility at Keahole Point on The Big Island, to be overseen by - Makai Ocean Engineering. NELHA CEO Jan War said, "**It certainly falls within our initial goals to provide a support facility for research on the OTEC process."

Hawaii currently has no OTEC commercial scale facilities, but that is Makai Ocean Engineering's ultimate goal. The new Keahole facility will test different coatings or alloys for increasing heat exchange efficiency. **Makai Ocean Engineering is investing $2.3 million in the project while Lockheed Martin provided some of the structural parts for the test facility's 40-foot tower.** But the issue is still investment money, which hinges upon the project's success in improving the heat exchange ratios.

The Hawaii Natural Energy Institute, a research group and part of the University of Hawaii Manoa director Richard Rocheleau stated bluntly, "People are not going to invest in this if the heat exchangers aren't tried and tested to the fullest degree" even as Makai Ocean Engineering Vice President Reb Bellinger complained, "The whole effort hinges upon how much money we can get in certain periods of time. We can't just stop part of the project because we don't have enough money."

And Makai Ocean Engineering has a mainland competitor, Baltimore-

based OTEC International, which last month NELHA selected for lease negotiation to build a one megawatt ocean thermal energy conversion demonstration plant on six acres of its 870-acre ocean, science and technology park on the Big Island. While negotiations of a lease agreement and terms have yet to be finalized, NELHA executive director Greg Barbour estimated the cost of the project at $30 million.¶ What is puzzling about the NELHA- OTEC International arrangement is that the one megawatt ocean thermal energy conversion demonstration plant is to be onshore, rather than in the deep ocean. **On its website OTEC International states that the onshore plant will "demonstrate the OTEC power cycle before it undertakes the capital intensive offshore, deep-ocean floating platform. This one megawatt pilot plant will demonstrate the OTEC power cycle and the scalability of the technology in the near term,** enabling OTI to proceed to commercial scale projects more quickly."¶ ¶ So, OTEC is proceeding, and you have two engineering companies racing to develop a scalable **OTEC deep ocean platform, one partnered with the world's largest defense contractor, the other largely underwritten for the last 11 years by the Baltimore-based nonprofit Abell Foundation.**

Hawaii can build OTEC—1AC Solvency author concedes that Hawaii can do the plan

Shimogawa 12
[Duane Shimogawa covers energy, real estate and economic development for Pacific Business News. "100-mw OTEC project planned for West Oahu" October 5, 2012 http://www.bizjournals.com/pacific/print-edition/2012/10/05/100-mw-otec-project-planned-for-west.html?page=all]JAKE LEE
OTEC International LLC is working with Hawaiian Electric Co. on a 25-year power-purchase agreement for its planned 100-megawatt ocean thermal energy conversion project, or OTEC, which would be built about five miles offshore from Kahe Point in West Oahu.¶ **If successful, it would be the first commercial-scale OTEC plant in the world and could prove to be a model for other projects of its kind, helping the state reach its renewable energy goal.**¶ The project, which will be split up into four modules of 25 megawatts apiece, would be built at an estimated cost of "hundreds of millions of dollars," according to OTEC International officials.¶ "**We [already] have done some survey work," said Eileen O'Rourke, chief operating officer for OTEC International**. "We will have some mooring lines [put in soon]."¶ The first-of-its-kind project is expected to take about three years in the pre-development phase, **which includes permitting, and another three years for construction, with a target operational date of 2018.¶ O'Rourke told PBN that it has chosen the New Jersey-based firm Burns and Roe to do the engineering work; a design/build team has yet to be chosen.**¶ In total, the project should create about 1,000 construction jobs and about 30 permanent jobs in Hawaii, where O'Rourke says the company would open an office.¶ "**A number of our team members are already in Hawaii," she said. "Many of those construction jobs will be on the Mainland, but the assembly of the parts** [of the project] will be done in Hawaii."¶ **Baltimore-based OTEC International is funded primarily by The Abell Foundation, a nonprofit that allocates a part of its portfolio to direct investments,** including renewable energy such as OTEC.¶ O'Rourke says that it has $320 million in assets and about 17 employees.¶ "As we move into our commercial projects, we are looking for investors that would join us," she said. "**There is a recognition of the tremendous market potential [for OTEC].**"¶ **Hawaiian Electric would not comment on the status of the power-purchase agreement, but officials did say that OTEC is a very promising technology with the potential to provide firm renewable power.**¶ "It could be a valuable part of our growing renewable-energy portfolio," Hawaiian Electric spokesman Darren Pai told PBN in an email.¶ The Oahu project isn't the only one in Hawaii that OTEC International is working on.¶ It also is moving closer to getting approvals for a 1-megawatt plant located at the **Hawaii Ocean Science & Technology Park, which is overseen by the state's Natural Energy Laboratory of Hawaii Authority in Kailua-Kona on the Big Island.¶ According to NELHA Executive Director Greg Barbour, the project is expected to generate $10 million in construction spending and create about 100 construction jobs**. It is scheduled to be completed by 2014.¶ "They're for real," Barbour said. "I like their business model, and they're bringing all of this money into the state."¶ Meanwhile, Waimanalo-

based Makai Ocean Engineering, which has similar OTEC plans, is interested in working with **OTEC International on its Oahu plant.¶ "We have talked with them about doing some work," said Duke Hartman, director of marketing for Makai Ocean Engineering, which is owned by the Makalii Holding Co., a group of local investors.**¶ As with any ambitious, first-of-its-kind type of project, there are challenges.¶ **OTEC expert Luis Vega told PBN that although he thinks OTEC International's plans are realistic,** they will be tough to do in Hawaii because of the challenge of getting environmental permits.¶ **"I think it's a great idea," said Vega,** who is manager of the National Marine Renewable Energy Center at the University of Hawaii. "People believe in things they can touch, so it's good for public relations.¶ "When you go to investors, they want to be able to see the prototype, and we have argued for a long time that we need a test project to show the financial community that something like this is viable," he said.¶ **Vega is no stranger to OTEC. He ran a 210-kilowatt plant at NELHA in the 1990s that has since closed.¶ No commercial-scale OTEC pumps exist in Hawaii today,** but NELHA estimated that 10 **OTEC plants producing 100 megawatts of electricity each could power all of Oahu.¶ Hartman told PBN that Makai Ocean Engineering could build an OTEC plant right now, but it has to make sense for investors and they're not yet convinced.**¶ "The situation is only going to improve," he said. "Research is only going to get better, **but we're trying to shrink down the cost as much as we can, making it as efficient as possible."**

States solve OTEC—many supporters

Combs 8 [Susan Combs is a writer for the Energy Report, "The Energy Report: Texas Comptroller of Public Accounts" May 2008, http://www.window.state.tx.us/specialrpt/energy/pdf/20-OceanPower.pdf]JAKE LEE

While many states are supporting research in renewable energy, only Maine, which **is considered** to have a high potential **for tidal energy**, includes any **support for research into ocean (tidal) power in its eligible renewable technologies**.26 **Hawaii includes both wave energy and ocean thermal conversion in its generous 100 percent tax credit for investment in "high tech business."27** The state of Texas offers no subsidies or incentives for ocean power.¶ There are no state or federal taxes or fees specific to ocean power, although ocean power companies would have to receive permits from FERC for power plants tied into multi-state electrical grids.¶ More information on subsidies for ocean energy can be found in Chapter 28. OTHER STATES AND COUNTRIES In **the U.S., Hawaii was an early location for experiments with ocean power, particularly ocean thermal conversion, and now interest is growing in the Northwest and the Northeas**t. **Tidal pilot projects are being considered in San Francisco Bay and New York City. Wave energy is being investigated in states such as Oregon, Washing- ton, Maine**, **Rhode Island and Florida. FERC has given approval for wave energy projects in Washington and Oregon to proceed, granting a preliminary permit for a demonstration of a device at Reedsport, Oregon and accepting a commercial In all, ocean power is an unlikely choice for Texas**. Despite our hundreds of miles of coastline, and the energy industry's many years of experience in **Gulf waters, the state lacks the conditions needed to bring inventors and investors to our shores.**

Other Solvency

Solvency: Aquaculture

Devotion of authority of aquaculture to the states solve

Rieser 97

[Alison Rieser is a professor and Director, Marine Law Institute, University of Maine School of¶ Law. B.S., Cornell University; J.D. with honors, George Washington University; LL.¶ M., Yale Law School "DEFINING THE FEDERAL ROLE IN OFFSHORE¶ AQUACULTURE: SHOULD IT FEATURE¶ DELEGATION TO THE STATES?" 1997 http://mainelaw.maine.edu/academics/oclj/pdf/vol02_2/vol2_oclj_209.pdf] JAKE LEE

An alternative to the Senate bill's approach would essentially **reverse the roles of federal and state agencies, giving federal agencies a consis- tency review to prevent navigational conflicts and possible national security problems in permits or leases issued by a coastal state. Instead of NOAA issuing the permit and receiving consistency certifications or proposed conditions from other federal agencies, a state with a federally- approved aquaculture** management program would do so. The idea is to delegate federal oversight and regulation of offshore aquaculture facilities to the adjacent coastal state, if that state has adopted a comprehensive program for the management and oversight of marine aquaculture. Each federal agency that presently asserts regulatory jurisdiction has some capacity to delegate its power to a state agency, either through express provisions like the Clean Water Act's section 402(b)3 ° (although limited to navigable waters within the state's jurisdiction) or through administrative measures such as the Corps' state programmatic general permit.131 **The full delegation may require amendments to the federal laws to make clear under what conditions federal delegation would be accept- able.** Absent such amendments, the details of the delegation could be worked out by interagency agreement among the Army Corps, EPA, the Coast Guard, and NOAA, on the coordination and delegation of their responsibilities to the state. Generally, in the past, these voluntary delegations of federal responsi- bility have been difficult to carry out. For example, states have not had much success in achieving a return of management responsibility for marine mammals under Section 109 of the Marine Mammal Protection Act, 132 and **it remains to be seen if states cooperate sufficiently in the interstate fisheries management process envisioned in the federal FMP withdrawal.** 3 3 What may be more feasible in the aquaculture context is a partnership for management, much like the more recent national marine sanctuary programs that involve both federal and state waters, e.g., the Florida Keys and Monterey Bay.13 4 A memorandum of understanding or interagency agreement could be the vehicle for coordinating these federal delegations. The memorandum could include guidelines for state programs that are very general rather than include a level of detail like that under the Clean Water Act's Section 4021s or the Marine Mammal Protection Act's Section 109 delegations, 136 but with sufficient detail to ensure that the states will meet the public trust obligations and protect other uses. **The state program for managing offshore aquaculture could be reviewed by the agencies before operating in the EEZ. This could occur through the submission of an amendment to the state's approved coastal zone management program.** 1 37 Funds are now available under the 1996 reauthorization of the Coastal Zone Man- agement Act for states to develop strategic plans for marine aquaculture. 3 **These funds could be used to develop a state-based EEZ management framework as well as one for state waters. Furthermore, the development of these program changes could be guided by new criteria agreed upon by the three delegating agencies and published by NOAA**. The criteria could include many of the item identified in the Senate bill's Section 7, on Model Environmental Guide- lines. ' **The difference would be that once the state program for offshore aquaculture is reviewed and approved, the other federal agencies would waive their ability to review individual applications,** or would have a very limited time to come forward with very specific concerns. **The federal responsibilities to protect public rights and environmental quality would be carried out by the state under the approved program**. Once the Secretary approves the state's program change, the state could then use the federal consistency provision to ensure federal agencies abide by the coordinated regulatory process contained in the program. Any serious proposal for delegating offshore regulatory jurisdiction to coastal states must consider where to draw the boundaries between the states, particularly in **New England where several states have coastlines that front the same offshore waters. While a full treatment of this question is beyond the scope of this Article, it should be noted that the issue of establishing lateral seaward boundaries is not new in the history of U.S. coastal management**. The 1976 **amendments to the federal**

Coastal Zone Management Act 4 included provisions designed to increase the incentives of states to accept new exploratory and development offshore drilling for oil and gas. Part of the legislation created a coastal energy impact fund and grant program that was to be allocated to the states based in part on the amount of outer continental shelf acreage adjacent to the state.14 Adjacency was defined as lying on the state's side of the "extended lateral seaward boundaries" of the state; 42 such boundaries to be based on agreement in existing or new interstate compacts, judicial decisions, or by application of the boundary delimitation principles of the 1958 Law of the Sea Convention on the Territorial Sea and Contiguous Zone.1 4 3 The above discussion is merely an outline of a possible approach. Further thought must be given to the proposed framework. It **is clear, however, that much of the enthusiasm and opportunity for developing an effective framework is at the state level, as state and local governments, fishermen, and conservation groups look for ways to redirect marine resource development activities away from overfished species and provide an environmentally sound and sustainable source of seafood and coastal community economic benefits.'14**

States can do aquaculture in their CZMA

Buck '12

[Lisa E. Buck, Master of Marine Affairs from the University of Washington, "U.S. Development of Offshore Aquaculture: Regulatory, Economic, and Political Factors," 2012 https://digital.lib.washington.edu/dspace/bitstream/handle/1773/21752/Buck_washington_0250O_10741.pdf?sequence=1] JAKE LEE

While this project focused on federal regulation, many **interviewees stressed the ¶ importance of state governments in the development of offshore aquaculture. At the state ¶ level, government attitudes toward the development of offshore aquaculture tend to ¶ reflect the priorities of the state's elected officials and their constituencies, and will be ¶ reflected in the state's CZM Plan**. These **priorities reflect** in turn the **economic, social and ¶ political situation of the state**. **States can develop their own aquaculture policies**, which ¶ may outline specific goals and objectives **unique to the priorities of their residents**. As ¶ regulations currently stand**, it is wise for any action taken by a party interested in ¶ developing an offshore aquaculture project to not only be consistent with federal laws ¶ and regulations, but also with the policy of the state whose coast they will be developing**. ¶ As is discussed in Section 5.1.3 of this thesis, states can invoke the Federal Consistency ¶ **clause of the CZMA and appeal any federally permitted action that will have an impact ¶ on their state's coastal zone. In this way, the coastal states of the United States have a ¶ distinct political stake in the development of a domestic offshore aquaculture industry.**

Solvency: Coastal Issues

States are better equipped and aware of regional issues and solve better

Rachael E. **Salcido**. **2008**. Offshore Federalism and Ocean Industrialization. 82 Tul. L. Rev. 1355 (2007-2008) Offshore Federalism and Ocean Industrialization. Professor of Law Director, Sustainable Development Institute Director, Environmental Law Concentration B.A., J.D., University of California, Davis Professor Rachael Salcido is a scholar of environmental and natural resources law, with particular expertise in ocean and coastal law and ecosystem restoration. Her articles have appeared in prominent law journals and she is an active member of the Rocky Mountain Mineral Law Foundation. GD

3. Ocean and Coastal Zone Planning and Protection **After initial recognition of the environmental impacts of offshore development, coastal states and local governments prompted the next phase of offshore federalism by seeking to increase their respective roles.** Spurred by national interest that culminated in the adoption of the CZMA, **coastal states began more concerted coastal planning guided by the CZMA and now constitute a significant source of coastal regulation.** 9 In the 1990s, following the federal government's extension from a three- to twelve-mile territorial sea, coastal states began agitating once more, and ultimately unsuccessfully, for additional offshore management jurisdiction.'8 ° 1386 [Vol. 82:1355 OFFSHORE FEDERALISM **Recently, to address the pollution from increasing populations and to restore marine ecosystems, many coastal states have also undertaken alternatives to the traditional rules-based laws used to manage oceans**. Some states have initiated a form of ocean zoning in addition to zoning inland. **States have delineated spatial areas offshore within state jurisdiction to manage the oceans for particular preservation and restoration goals: one example is California's Marine Life Protection Act.**'8' The purpose of the Act is to review the adequacy of existing marine protected areas and to determine the need for new marine protected areas.'82 The most controversial aspect is the designation of new areas as off-limits to extractive activities.'83 Further, funding for implementation was an early issue that halted implementation and is projected to remain a salient issue moving forward.' 84 Similar state efforts and **coastal state and regional coalitions indicate an increasing awareness of the challenges of sustainable coastal management across jurisdictional boundaries**.' As discussed further in Part I, **these approaches hold important promise for ecosystem-based management.** Unfortunately, **federal funding for increased coastal management has waned over time,** and funding for these initiatives is becoming a significant impediment to their progress. ' Certainly, these financial issues do **emphasize the need for shared revenues where the environmental impacts of coastal and offshore developments can be mitigated by rents, royalties, and other types of development payments made by private users of public resources.'** 7 Yet it does not explain the continued narrow focus on 2008] 1387 TULANE LA W REVIEW boundaries and revenues that currently dominates the debate over legal reform.'88

States have increasing jurisdiction over the region

Rachael E. **Salcido**. **2008**. Offshore Federalism and Ocean Industrialization. 82 Tul. L. Rev. 1355 (2007-2008) Offshore Federalism and Ocean Industrialization. Professor of Law Director, Sustainable Development Institute Director, Environmental Law Concentration B.A., J.D., University of California, Davis Professor Rachael Salcido is a scholar of environmental and natural resources law, with particular expertise in ocean and coastal law and ecosystem restoration. Her articles have appeared in prominent law journals and she is an active member of the Rocky Mountain Mineral Law Foundation. GD

B. LegalReforms To Promote Ocean Development **In the last few years, a number of legal changes have been made to modernize the OCSLA-CZMA framework for offshore and coastal developments."**9 **The OCSLA-CZMA process has implications for aquaculture, offshore**

minerals, LNG, wind and wave power, and desalination.' 9° **Crisis again is the impetus for changes-initially illustrated by the collapse of commercial fisheries, toxic algae blooms, and beach closures due to bacterial contamination of adjacent waters.'** The horrors inflicted on Gulf Coast residents by the devastation of Hurricane Katrina also brought to light the environmental impacts of energy development and the loss of coastal wetlands that provided a natural hurricane buffer.'92 But more than anything, **the drive for industrialization to serve human needs is leading the way for legal reforms**.'93 Richard Charter, Co-Chair of the National Outer Continental Shelf Coalition put it thusly: In an increasingly urgent quest for fuel, food, and minerals, our nation has arrived at the margins of the North American Continent and now appears to be inevitably headed offshore. We are now turning to the exploitation of the ocean in new ways- searching for the raw materials 1388 [Vol. 82:1355 OFFSHORE FEDERALISM of an industrial society-looking relentlessly for protein to feed humans and pen-reared fimfish, trying to find more oil and natural gas to power our machinery, digging up metals with which to build still more machines, while desperately seeking a place to dump our industrial waste and to find a repository in which to hide excess carbon byproducts to halt the dangerous warming of our global climate. 94 The **expert reports published by USCOP and** the Pew Charitable Trust (**Pew**) **have also driven legal changes**. The USCOP report touted the OCS legal regime as mature and an appropriate platform for continued development offshore. "' According to their assessment, this OCS legal framework benefits from its endurance over time, though notably it is still fraught with contention.'96 The statutory and regulatory framework is "process rich"; it has been well-tested through litigation and it has some measure of transparency.' 7 **The USCOP endorsement helped usher in a reinvigoration of the OCSLA-CZMA framework for offshore development. In the EPA of 2005, Congress both expanded OCSLA and revised the CZMA to facilitate offshore development.**'98 Unfortunately, Congress did not address the many flaws of the framework, relying instead on preemption, avoidance of environmental concerns, and rhetoric, rather than long-term plans for EEZ development.9 In large part, the most recent amendments to the law impacting the offshore federalism relationship came from the EPA of 2005.2°° **Some of the changes affect the unique state-federal sharing of the burdens and benefits of offshore development and coastal management."'** As explored in the following paragraphs, **the EPA of 2005 amended portions of OCSLA and the CZMA to facilitate energy development**."2 Congress gave financial incentives to private parties to develop ocean resources and specific substantive provisions to facilitate increased oil and gas exploration,2°3 open-ocean aqua- 2008] 1389 TULANE LA WREVIEW culture,2" and wind energy generation projects. °5 **Several substantive amendments address the relationship between states and the federal government, including: CZMA consistency provisions, 206 OCSLA revenue sharing,0 7 a coastal environmental impact program, 8 preemption of state involvement in favor of the Federal Energy Regulatory Commission for the siting of LNG facilities within the coastal zone,09 and extended federal authority to site alternative energy projects offshore through OCSLA**. 1°

Solvency: Energy

States are first-movers

Litz 2k8
(Franz T. Litz, Esq., Senior Fellow at world resource institute, "toward a constructive dialogue on federal and state roles in u.s. climate change policy", World Resource Institute, June 2008)
A number of arguments exist to support **state-level action on climate change. States have**historically **played a role as effective first-movers on important environmental issues, functioning as policy innovators, testing policies** that have **later** been **adopted at the federal level. States** also **bring an understanding of the unique circumstances within their boundaries** and a familiarity with their stakeholders. **States drive federal action,** sometimes **insisting** that **policies** be **strengthened** even **after** the federal **government has acted**.

States create federal follow on

Dutzik, 11 - senior policy analyst with Frontier Group, specializing in energy, transportation and climate policy (Tony, "The Way Forward on Global Warming Reducing Carbon Pollution Today and Restoring Momentum for Tomorrow by Promoting Clean Energy", http://www.environmentamerica.org/sites/environment/files/reports/The-Way-Forward-on-Global-Warming.pdf)
Over the past several years, vast resources have been devoted to winning comprehensive energy and climate legislation at the federal level, and for good reason— comprehensive federal legislation will be necessary to produce the emission reductions needed to put America and the world on track to prevent the worst impacts of global warming. There are, however, countless additional opportunities to reduce emissions using existing federal statutes as well as the opportunities presented by action at state and local levels of government. In this report, we estimate the potential impacts of 30 public policies, measures and initiatives to reduce global warming pollution, most of which can be adopted at the state level. With 50 states, that makes more than 1,000 potential opportunities to reduce global warming pollution. **State and local action on global warming is not a "second-best" solution**to the climate crisis. Indeed, **time and again, ambitious public policy action at the local or state level has created a precedent for strong action at the federal level.** Moreover, as described below, **state and local campaigns can involve and engage citizens in ways that federal legislative campaigns cannot**. Under the right conditions, **these policies can not only deliver concrete emission reductions, but they can also spur changes in infrastructureand transformeconomic conditions in ways that willmake the goals of an eventual national program easier to meet.**

States are key to renewable transition

Jackson 11
(Rosalind Jackson, Press Contact for Network for New Energy Choices, "More States Make the Grade on renewable policies for American energy Consumers according to 5th Annual Report Card", NNEC October 20, 2011)
New York – October 20, 2011 - Renewable energy advocates today released the 2011 Edition of Freeing the Grid, a policy guide that grades all 50 states on two key programs: net metering and interconnection procedures. Together these policies empower energy customers to use rooftop

solar and other small-scale renewables to meet their own electricity needs. Now in its fifth year of publication, the report shows that **states nationwide are continuing to embrace best practices and drive further improvements in** these **core renewable energy policies**. The report's methodology was also adopted for use in the U.S. Department of Energy's SunShot initiative, which aims to reduce the cost of going solar by 75% before the end of the decade. **"It is clear that our nation's states can and will continue their** proud **role as the growth drivers of America's new energy economy. Renewable energy has strong support from state policymakers** and the citizens they serve. **That support is not restricted to any particular party affiliation or geographic location. It is bi-partisan,** it is **pervasive, and** it is **no surprise**. If there's one thing Americans in all our diversity can agree on, it's that we can do better with our energy choices. Freeing the Grid outlines a better path forward," said Adam Browning, Executive Director of Vote Solar. Freeing the Grid 2011 report highlights: • Net Metering Policies: Commonly known as the policy that lets a customer's electric meter spin backwards, net metering is a simple billing arrangement that ensures solar customers receive fair credit for the electricity their systems generate during daytime hours. Net metering best practices have evolved to include virtual net metering, meter aggregation and other innovative community solar models that allow energy consumers to come together and take advantage of economies of scale when investing in clean energy. In 2011, 17 states received top "A" grades for their net metering policies, up from 15 in 2010 and only 5 in 2007. • Interconnection Procedures: Interconnection procedures are the rules and processes that an energy customer must follow to be able to "plug" their renewable energy system into the electricity grid. In some cases, the interconnection process is so lengthy, arduous and/or expensive that it thwarts the development of clean energy altogether. In recent years, many states have been working to streamline interconnection. In 2011, 23 states received "A" or "B" grades for good interconnection practices, up from twenty in 2010, and a tremendous improvement over the single "B" grade awarded in 2007. • Head of the Class: Massachusetts and Utah received top "A" grades in both policy categories for the second year in a row. In 2011 they are joined at the vanguard of best practices by Delaware, which made particularly impressive improvements to its interconnection practices from last year's "F" grade. • Shows Promise: A number of states received an "A" in one category and a "B" in the other making them strong distributed renewable energy markets that have continued room for improvement: California, Colorado, Connecticut, Maine, Maryland, New Jersey, Oregon, Pennsylvania, Virginia, and West Virginia. • Most Improved: Indiana made impressive year-over-year improvements, from a "D" in net metering and "C" in interconnection in 2010 to solid "B"s in both categories this year. "**The age of grid parity is upon us—in some places in the country, you can generate your own electricity with solar and wind more cheaply than buying dirty power from your utility**. It's truly the democratization of energy, but it only works if you have access to the plug and if you get fair credit for generation. Poor interconnection and net metering policies can stand in the way of building a sustainable, growth industry. Ensuring that residents and business have fair access to the grid and get fair credit on their utility bills are two simple but highly effective ways to unleash renewable energy growth," said Kyle Rabin, Director of NNEC. "**Renewable power has the ability to jointly address three of the most pressing issues facing our country today: the economy, energy and the environment**. Given all that's at stake, **all 50 states should be making the grade. I encourage state policymakers** and renewable advocates **to** explore Freeing the Grid and **apply the lessons** therein **to improving** these **important energy policies in their own states**," said Joseph Wiedman, representing the Interstate Renewable Energy Council (IREC). "We produce Freeing the Grid each year to reflect current best practices in this dynamic policy arena and give state leaders a clear blueprint for renewable energy success. We are particularly proud to have had our 2011 guidelines used in the grant review process of the DOE's new SunShot Program, an initiative to significantly reduce the cost of going solar in states and communities nationwide. With these policies, **states have the tools they need to help make renewable energy cost-effective**," Laurel Varnado, Policy Analyst with the North Carolina Solar Center.

States solve—adopted energy systems

Ferrey 4
[Steven Ferrey is a Professor of Law, Suffolk University Law School. B.A. 1972, Pomona ¶ College; J.D. 1975, M.A. 1977, University of California, Berkeley; Fulbright ¶ Fellow, University of London, 1975-76. "SUSTAINABLE ENERGY, ¶ ENVIRONMENTAL POLICY, AND ¶ STATES' RIGHTS: DISCERNING THE ¶ ENERGY FUTURE THROUGH THE EYE OF ¶ THE DORMANT COMMERCE CLAUSE" 2004] JAKE LEE
A **resource portfolio requirement requires certain electricity ¶ sellers and/or buyers to maintain a predetermined percentage of ¶ designated clean resources in their wholesale supply mix.111 A ¶ number of variations of resource portfolios** are possible, including ¶ a renewable resource portfolio requirement, a DSM portfolio ¶ requirement, and a fossil plant efficiency portfolio requirement.112¶ The concept of the renewable energy portfolio is attributed to ¶ **the American Wind Energy Association and first adopted by ¶ California in its restructuring decision.113 While Massachusetts ¶ and Connecticut were the only two states in the first wave of retail ¶ deregulation to adopt both a system benefit**

charge to fund ¶ renewable technologies and a resource portfolio standard ¶ mandating renewable wholesale power sources, seven states (not ¶ all of them deregulating) have adopted both programs, including ¶ Arizona, California, Minnesota, New Jersey, and Wisconsin.

Solvency: Environmental Justice

States solve environmental justice better than the federal government:
Michele L. **Knorr, 1997** (University of Baltimore Journal of Environmental Law, 6 U. Balt. J. Envtl. L. 71, "Environmental Injustice: Inequities Between Empirical Data and Federal, State Legislative and Judicial Responses," Lexis/Nexis,) //GD
n153 Id. On January 4, 1996, Congresswoman Collins reintroduced the Environmental Equal Rights Act which is virtually identical to the 1993 Act. Once again, she relied on the studies mentioned in the 1993 version. To date, this Bill has not passed. With evidence so clear, **it is disappointing that no federal legislation has passed to adequately address the disparate environmental impacts on minority and low-income communities. Since the federal legislation has failed to address these problems, the states must enact and enforce environmental justice legislation**. 142 Cong. Rec. E13-01 (January 4, 1996).

Solvency: Exploration

States can do ocean exploration—Alaska Proves

Roberson 13 [Julia Roberson directs Ocean Conservancy's ocean acidification program "Why Exploring the Ocean is More than Cool, it's Vital" June 11, 2013 http://blog.oceanconservancy.org/2013/06/11/why-exploring-the-ocean-is-more-than-cool-its-vital/]JAKE LEE

Later today **filmmaker and ocean explorer James Cameron will be headlining a hearing in the Senate Commerce Committee about the importance of funding ocean science and exploration.** Also on display outside the hearing is the Deepsea Challenger, the **submersible Cameron piloted in a historic solo dive to the Challenger Deep in the Marianas Trench**.¶ Fantastic voyages like the one taken by James Cameron are truly inspiring for the sheer physical **accomplishment. But they are also a stark reminder of how little we still know and understand about the ocean. In a world where the chemistry** of the ocean is now changing faster than life can adapt, it's vitally important that we learn as much as we can about the ocean to better prepare for the future.¶ The knowledge gained through these inspiring feats of marine exploration must be used to drive meaningful policy. **Today's hearing is exactly the kind of follow-through that is needed. Blockbuster expeditions like that taken by the Deepsea Challenger are few and far between, but basic research and monitoring of the ocean** should be happening every day.¶ The **Senate hearing today will focus on key issues, like how the government could fund more research on critical topics like ocean acidification, o**r on globally important areas like the Arctic Ocean.¶ Ocean acidification happens when significant amounts of carbon dioxide pollution are absorbed by the ocean. A chemical reaction is occurring in our oceans right now as our carbon emissions increase, making the water more acidic, thus making it harder for some sea creatures to thrive.¶ **Last year Washington State established a panel to develop recommendations for how the state should address ocean acidification. Its oyster industry nearly went bankrupt because of the problem, and they're worried about other impacts to species, such as salmon and crab. The panel is providing some money for research but a great deal more is needed to address this challenge**. We are just beginning to understand the effects ocean acidification in fragile ecosystems like the Arctic. **Other states like California and Maine are beginning to express concerns about ocean acidification as well. Just yesterday Maine's legislature announced a resolution identifying ocean acidification as jeopardizing their coastal** economy.¶ On the federal level we are fortunate to have the Federal Ocean Acidification Research and Monitoring Act of 2009. **That Act was designed to help coordinate and promote research across the country, but right now it is far from being funded at levels that are equal to this massive challenge**.¶ Some non-governmental organizations are responding to the need - the X-Prize foundation is developing a prize for improvements in ocean acidification sensors, but federal funding is still a critical need for scientists working on acidification and businesses impacted by it.¶ Separate from the challenge of acidification, temperatures in the Arctic are warming at twice the rate of the global average, seasonal sea ice is diminishing rapidly, and there is increased interest in oil exploration, commercial fishing, shipping, and tourism in the region. **Senator Begich of Alaska has introduced legislation that acknowledges that lack of integration and coordination among existing Arctic research and science programs has limited our ability to understand the important changes that are taking place in the Arctic. Our understanding of the Arctic marine ecosystem, which provides irreplaceable benefits, is further hampered by a lack of reliable baseline data, critical science gaps, and limited documentation and application** and use of traditional knowledge. In addition to urgently-needed baseline data and analysis of ecosystem functions in Arctic marine waters, **Senator Begich's legislation would enable the gathering of information about subsistence resources and patterns of use in local economies, which are essential to the people and cultures coastal communities in the Arctic.¶ The kind of broad, steady monitoring of the ocean's health may not be as spectacular as record-breaking dives to the deepest, darkest sea floor, but the knowledge we can gain and the benefits we can reap from a healthy ocean are certainly no less valuable.¶**

Solvency: LNG

The Clean Water Act provides states action with LNG exports

Darby, Robins, and Webb 11[Beth L. Webb is a Partner and Joan M. Darby and Janet M. Robins are Counsel in the Energy Practice of Dickstein Shapiro LLP. All have assisted clients in federal and state agency and court proceedings involving approvals needed to construct interstate pipelines and LNG import terminals. The authors wish to thank Frederick M. Lowther, also a firm Partner, for his valuable insights and editorial assistance. "THE ROLE OF FERC AND THE STATES IN APPROVING AND SITING INTERSTATE NATURAL GAS FACILITIES AND LNG TERMINALS AFTER THE ENERGY POLICY ACT OF 2005 -- CONSULTATION, PREEMPTION AND COOPERATIVE FEDERALISM" 2011 Lexis]

The CWA also provides states with the authority to grant or deny water quality certifications ("WQCs"). n91 Spe-cifically, **CWA section 401 requires** that, **before any federal agency can issue a "license or permit to conduct any activi-ty** including, but not limited to, the construction or operation of facilities, which may result in any discharge into the navigable waters," **the applicant must "provide the licensing or permitting agency a certification from the State . .** . that any such discharge will comply with the applicable provisions" of the CWA. n92 Because **the construction of all LNG import terminals and most interstate pipelines results in some "discharge" n93 into navigable waters, virtually all** [*350] **such facilities need a WQC from at least one state**. n94 **Until an affected state either grants a WQC**, expressly waives its right to do so, or implicitly waives its right by failing to act within a reasonable period of time, **this section effectively prohibits FERC from permitting any such facility to commence construction.** n95¶ In addition to having the power to deny certification, **a state granting a WQC has the authority to require the project to comply with any conditions deemed necessary to ensure the project will comply with state water quality standards, effluent limitations, standards of performance, pretreatment standards and other requirements established by EPA**, as well as "any other appropriate requirement of state law." n96 **Any condition that a state imposes in its WQC must also become a condition on any authorization issued by FERC.** n97

Solvency: LNG Leasing

Federal environmental law has been delegated downward—states have ultimate authority for permits

Darby et al 11
(Joan, Counsel in the Energy Practice of Dickstein Shapiro LLP "The Role Of Ferc And The States In Approving And Siting Interstate Natural Gas Facilities And Lng Terminals After The Energy Policy Act Of 2005 -- Consultation, Preemption And Cooperative Federalism," 6 Tex. J. Oil Gas & Energy L. 335, pg Lexis)
States have delegated authority under three federal laws -- the CZMA, CWA and CAA -- to issue authorizations for NGA jurisdictional facilities, and this authority cannot be preempted. Because applicants must obtain these federal authorizations from the appropriate states before natural gas projects can proceed, these laws give states the ability to veto a project, even where FERC has authorized it. n77 EPAct expressly preserved this state authority in a savings clause that provides: "Except as specifically provided in this Act, nothing in this Act affects the rights of States under [the CZMA, CAA, or CWA]." n78 Nevertheless, EPAct affected the way states may exercise their authority under these statutes, requiring state administrative agencies and officials to cooperate with FERC, comply with the FERC-established deadlines and assist FERC with the development and maintenance of a complete consolidated record. n79 The provisions of the CZMA and the CWA, the statutes most commonly invoked to veto projects, are described below. n80

Only the CP solves – states otherwise block the plan

Darby et al 11
(Joan, Counsel in the Energy Practice of Dickstein Shapiro LLP "The Role Of Ferc And The States In Approving And Siting Interstate Natural Gas Facilities And Lng Terminals After The Energy Policy Act Of 2005 -- Consultation, Preemption And Cooperative Federalism," 6 Tex. J. Oil Gas & Energy L. 335, pg Lexis)
What often stands between certification of a proposed natural gas project by the Federal Energy Regulatory Commission under the Natural Gas Act and actual construction is a state government opposed to the project. The federal preemption doctrine precludes the state from invoking its own laws to block the project, but the state remains able to use its delegated authority under certain federal laws, including the Clean Water and Coastal Zone Management Acts, to achieve the same purpose. Under the "cooperative federalism" scheme embodied in those laws, **the state must issue a water quality certification and/or concur in a project's coastal zone consistency certification before FERC will authorize the project to commence construction**. Recognizing that state opposition was impeding FERC-certificated projects, Congress in the Energy Policy Act of 2005 attempted to clarify the respective roles of FERC and the states. It gave states a larger role in FERC LNG proceedings, e.g., by requiring FERC and the applicants to consult with states about safety and security concerns. At the same time, it gave FERC the role of developing the consolidated record and coordinating the timetable for the many federal and state approvals required for natural gas projects, and provided for federal court review of state action or inaction. The numerous lawsuits filed by the Islander East, Weaver's Cove and Sparrows Point projects to challenge the actions of opposing states present revealing post-EPAct case studies of preemption and cooperative federalism issues. Using those case studies, this article explores the roles of FERC and the states, lays out the post-EPAct statutory and regulatory framework, examines the inherent tensions in the cooperative federalism model, assesses the extent to which EPAct has made a difference, demonstrates that the process of obtaining all the approvals needed to construct an NGA jurisdictional facility remains complex, and highlights with important issues arising in the approval process that remain unresolved.

Even with a clear signal – states use authority to prevent or seriously delay solvency

Darby et al 11
(Joan, Counsel in the Energy Practice of Dickstein Shapiro LLP "The Role Of Ferc And The States In Approving And Siting Interstate Natural Gas Facilities And Lng Terminals After The Energy Policy Act Of 2005 -- Consultation, Preemption And Cooperative Federalism," 6 Tex. J. Oil Gas & Energy L. 335, pg Lexis)

In the spirit of "cooperative federalism," n11 **Congress has** also **delegated** [*338] **federal authority to the states to consider local environmental impacts**. States exercise this federally-delegated authority when issuing: (1) determinations of whether a natural gas project is consistent with the state's federally-approved coastal zone management plan under **the CZMA**; n12(2) water quality certifications under section 401 and point source permits under section 402 of **the CWA,** n13 **and** (3) various permits under **the** Clean Air Act ("**CAA**"). n14 **These** laws, models of cooperative federalism, n15 **give a state the power to veto or seriously delay a proposed project** that, in its view, will not comply with the federal law it administers, **even when that project has successfully obtained FERC authorization and passed other regulatory hurdles**. In addition, **states and localities sometimes attempt to regulate such projects by applying their own laws and regulations**, a process that frequently leads to additional delays and litigation over whether the state and local laws are preempted by the NGA.

Solvency: Natural Gas Drilling

States can drill for natural gas—can make a profit

Spence 13
[David Spence is Professor of Law, Politics & Regulation, University of Texas at Austin. Professor Spence wishes to thank participants in the Northwestern University Law School's Searle Center 2012 Conference on Federalism and Energy in the United States for their insightful comments on an earlier draft of this Article and Andrew Dittmar for his research assistance during the preparation of this Article. "FEDERALISM, REGULATORY LAGS, AND THE POLITICAL ECONOMY OF ENERGY PRODUCTION" January 2013 Lexis] JAKE LEE

If most of fracking's effects are local, states should be in the best position to balance costs and benefits and ought to build their regulatory infrastructures accordingly. However, some people, including at least a few government officials, have challenged the capacity of states to manage the regulatory process adequately. n308 **For example, commenting on the recently proposed New York fracking regulations,** EPA Region II Administrator Judith Enck questioned whether the New York State Department of Environmental Conservation (NYSDEC) had sufficient staffing and other resources to handle the job. n309 While states have reacted differently to the fracking rush, **New York seems a particularly unlikely candidate for capture, since its government is controlled by Democrats** and the state's environmental agency maintains regulatory authority over gas production. n310 Indeed, **New York** has **moved cautiously for** the most part, **studying the [*494] problem** and revising its regulations prior to permitting new fracking wells. n311 **This approach has resulted in the relatively slow growth in the number of gas wells drilled** in New York over the last decade, at least in comparison to **Pennsylvania and Texas. n312 Those latter two states have been less cautious**. Both have recently produced **considerably more natural gas than New York**, n313 but their experiences with growth in this industry have been different from one another: fracking seems to have produced more problems and controversy in Pennsylvania than in Texas. n314 **Do these differences reflect a race to the bottom in which local policymakers regulate less than** they would otherwise like to in an effort to attract natural gas industry jobs and dollars?¶ A **recent University of Texas study examined state enforcement capacity in shale gas-producing states and found "wide variation" in the ratio of enforcement staff to the number of shale gas wells**. n315 Yet it concluded that "most states with current shale gas and related development **have enforcement capacity necessary to address at least some complaints associated with oil and gas development** and to conduct independent enforcement actions." n316 This statement is relatively circumspect, to say the least, and the University of Texas study took a close look at only four states, including Texas (but excluding New York and Pennsylvania). n317 **Given that regulatory agencies routinely face budgetary constraints and information asymmetries in their efforts to regulate and monitor,** it may very well be that rapid expansion in shale gas production has overwhelmed regulators in some states, particularly those without significant experience regulating natural gas production. Is this simply part of the regulatory lag problem? **Can we assume that, as locals experience the externalities of fracking,** they will expect their political leaders to regulate?¶ We might infer that this is so, because decisions governing shale gas regulation are unlike the typical race-to-the-bottom scenario, such as a decision to locate a new manufacturing plant in one of several candidate states. **In the latter case, multiple states compete for a single** (or small number of) large and long-lived capital investments. One (or a few) **can win; the rest will lose. While the manufacturing plant can be constructed** [*495] almost anywhere, absent legal impediments, fracking occurs only where **shale gas** deposits **are found**, and **companies will invest in natural gas** production **wherever gas can be produced** profitably. Investment in production in one **state does not preclude simultaneous investment in another**; to the contrary, companies will invest simultaneously in hundreds of wells. **States are not chasing limited investment** capital, as in the usual race-to-the-bottom scenario. Rather, in shale gas production, investment capital is chasing production opportunities. **Thus, a state does not risk losing the economic benefits of shale gas development** unless the regulatory costs **it imposes on**

production are sufficient to render otherwise profitable production unprofitable. n318 **Even then, the state does not lose that capital to another state forever; the capital may return if natural gas prices** increase sufficiently to make production profitable within the state. **Thus, a race to the bottom should not characterize state regulation of natural gas production**

Solvency: Ocean Acid.

State action key to solve for ocean acidification

Elspeth **Dehnert. 6/5**/2014. Reporting Fellow at ClimateWire, Environment & Energy Publishing Guest Blogger at GlobalSolutions.org Editor at Living Well magazine, Front Row Publishing Writer at Home magazine, Front Row Publishing Copywriter/Editor at Freelance Contributing Writer at JO magazine Documentary Film Production at Freelance Social Media Consultant at UN Women-East Florida Chapter Broadcast News Production Intern at Al Arabiya, UN Headquarters Communications & Advocacy Intern at Coalition Against Trafficking in Women (CATW). "Acid Oceans Can Be Fought at Home". Climate Wire – Scientific American. http://www.scientificamerican.com/article/acid-oceans-can-be-fought-at-home/ GD

For coastal communities in the United States, **the path to confronting souring seas can likely be found close to home in their very own backyards.** In fact, according to a recent study co-authored by several current and former Stanford researchers, **there are several local and regional actions**—many of which are not too costly—**that can be taken to accelerate the adaptation to ocean acidification.** "We think of ocean acidification as being controlled by carbon dioxide, and it is, but **there are a lot of different things humans do that affect the chemical equilibrium of the carbonate system in the coastal zone,"** said Aaron Strong, lead author of the study and a graduate student in the Emmett Interdisciplinary Program in Environment and Resources. He pointed to river discharge, local-scale upwelling, and nutrient and stormwater pollution as some of the major factors behind ocean water's increasingly unbalanced acidity levels. **"Ocean acidification should become a part of the conversation among quality managers, stormwater managers, agricultural managers ... and it tends not to be in that space,"** Strong added. To fill in the gaps, the study outlines current local and regional ocean-acidification management efforts and recommends nine other "opportunities for action" that state agencies, nongovernmental organizations, universities and industry can implement for about $1 million a pop. "An international agreement on climate change to reduce CO2 is not the only solution," he said. Using what's out there T**he report points out that there are a lot of ways for state** and national **decisionmakers to use existing laws, policies and research programs when confronting ocean acidification.** For example, the study states, **authorities could integrate the effects of ocean acidification into current and future climate change programs and state-level coastal programs under the Coastal Zone Management Act of 1972;** make it a focus within federal programs, such as the Interagency Climate Change Adaptation Plan; **and further develop a coordinated regional network of monitoring stations to map the vulnerability of coastal areas.** The National Oceanic and Atmospheric Administration's Ocean Acidification Program has established a successful monitoring program at the regional scale. A bit over one month ago, it made a startling discovery off the country's West Coast—proof that ocean acidity is indeed having a negative impact on marine species (ClimateWire, May 1). "I was surprised to see this huge spatial range of the region where, for 1,000 miles, we saw so many pteropods [a type of sea snail] being dissolved," said NOAA scientist Nina Bednaršek. But one of the least expensive—and perhaps most effective—options out there, according to the authors, is public education programs. "We should integrate ocean acidification into K-12 science education," Strong said. "You don't have to reinvent the wheel here." Making cross-border waves **Some states** and regions, however, **are leading the charge.** Launched in 2011 by former Washington state Gov. Christine Gregoire (D), **the Blue Ribbon Panel brought together policymakers, scientists, public opinion leaders and industry representatives to discuss the effects of ocean acidification on the state's shellfish resources.** It was a groundbreaking success that spurred similar efforts in California, Oregon and Maine, Strong said. **The panel also inspired the creation of the West Coast Ocean Acidification and Hypoxia Science Panel,** a regional initiative composed of scientists from California, Oregon, Washington and British Columbia **that aims to identify coastwide management approaches and provide an example for other regions striving to combat the effects of ocean acidification and hypoxia.** "While regional initiatives can't hope to replace international efforts, we're worried about what ocean acidification is going to do to marine ecosystems and the communities that depend on them," said Michael "Moose" O'Donnell, a staff scientist on the panel and senior scientist at the California Ocean Science Trust. "The Pacific Northwest, West Coast states and Maine are at the forefront of this, but ocean acidification is also a problem in the Chesapeake Bay and Gulf of Mexico, and we hope **these actions will provide a template and framework for more broad and comprehensive action,"** Strong said.

Solvency: Oil Drilling CP (Alaska)

Alaska can do oil drilling—federal government is blocking—reason why the plan triggers the link of DA

Davenport 11
[Coral Davenport is a staff writer for the National Journal "Alaska Pushes Drilling Plan for Offshore, Area Near ANWR" June 20, 2011 http://www.nationaljournal.com/energy/alaska-pushes-drilling-plan-for-offshore-area-near-anwr-20110630] JAKE LEE
The Alaska governor's office, which has long griped that the Obama administration has blocked oil drilling in the Arctic Ocean and Arctic National Wildlife Refuge, is aggressively pushing a plan to drill off a pristine strip of state-owned coast threading between the federally protected lands and waters.¶ **Alaska Gov. Sean Parnell, a Republican, announced** the plan on Thursday by teleconference at a Washington press conference held in conjunction with the U.S. Chamber of Commerce**. It would allow the state to start allowing drilling in the Beaufort Sea, up to three miles off the federally protected regions of ANWR and the National Petroleum Reserve-Alaska**, bypassing the need for federal permission. **It also appears calculated to ramp up political pressure on the administration to allow new drilling on the contested federal lands and waters**.¶ Parnell said he intends to use this move to encourage other coastal states to expand drilling.¶ "We're setting an example for what other states can do. Much of Alaska's promising lands are under federal control. **We need America's help to spur production."** ¶ **"This is breaking new ground," said a senior official at a major U.S. oil company, who asked not to be identified since all major oil companies were not made aware of the decision before it was announced**. "In the past, nothing anywhere **near ANWR** was even talked about. This would present an opportunity that's never been available before. The industry will welcome this as a positive development." ¶ **It's long been a source of ire to the oil industry—and relief to environmentalists—that the federal government has final say on whether companies can drill in the federal waters of the Arctic Ocean, the 19 million acres of ANWR, and the 24 million acres of the National Petroleum Reserve, which are believed to hold more than 10 billion barrels of undiscovered oil**. But those areas are also home to sensitive and unique ecosystems that could be devastated by a disaster like last summer's Gulf of Mexico oil spill. Since the federal government created ANWR in 1960 and the NPR in 1923, it has fought attempts to open up the wildlife refuge and resisted efforts to issue permits to drill in the reserve. **The administration has issued permits to Shell Oil to begin drilling the first exploratory wells in the Beaufort and Chukchi seas, but it delayed those plans after the Gulf spill, citing the need for more research into impacts of an Arctic spill.¶ All of this has aggravated officials in Alaska**, which derives most of its revenue from oil royalties. ¶ "The first couple of years of the Obama administration have felt like an onslaught," Alaska Department of Resources Commissioner Daniel Sullivan told National Journal in an interview.¶ So state officials say they found a way to take action. While the state has no control over drilling in ANWR, **it does own the three miles of Arctic Ocean just off the coast—after those three miles, the federal government owns the waters**. Officials say it stands to reason that that three-mile ribbon likely cuts **through the vast oil deposits believed to lie beneath ANWR and the Arctic Ocean. Alaskan officials and oil companies hope that by drilling in that strip**, they can tap into up to a dozen giant oil pools that would otherwise be off-limits. And if they do hit significant reserves there, that could pressure the federal government to open adjacent areas. **Another option Alaskan officials are hoping for is passage of a bill sponsored by Sen. Lisa Murkowski, R-Alaska, the ranking member of the Senate Energy and Natural Resources Committee, which would allow drillers in state-owned waters to use horizontal drills to siphon oil from underneath the adjacent protected areas.** ¶ Sullivan said he expects Alaska's October sale of onshore and offshore drilling leases to be the largest such sale this year. Overall, it will open up 14.7 million acres to drilling, an area equal to Massachusetts, Connecticut and Vermont combined. ¶ **He added that he is confident that companies that find**

oil in the state waters between the federal properties will be able to withstand any legal challenges. ¶ "We've looked hard at the legal issues surrounding such plays, and we are confident that if a company drilled down straight down within that play, and drained that reserve, they will be within their legal rights. **Large oil and gas fields don't respect state and federal boundaries. But if a company drilling on state land hit that well they would be within their legal right to drain that well."** ¶ The pushback from the environmental community should be fierce. Over a year after the deadly Gulf oil spill highlighted the dangers of offshore drilling, Congress has yet to pass legislation requiring new offshore-drilling safety measures, and environmental advocates, led by the Pew Environment Group, have pressed President Obama not to allow any new drilling in Arctic waters, where, green groups say, extreme weather conditions and a sensitive ecosystem could make the impacts of a spill even more devastating. ¶ Eleanor Huffines, manager of Pew's U.S. Arctic Program, said that the group does not have a problem with the current drilling in Alaska's state-owned waters, which takes place near the on-land Prudhoe Bay drilling operations. ¶ "**To date the state-water offshore-drilling facilities have been done in a way that minimizes harm to the environment**," she said. "But for each plan, location is important. To date it's been done safely, but that's not to say you could do that off ANWR. You have to connect to the coast, **which means building infrastructure. How could you do that in ANWR? The risks to sensitive species would be higher**. It would be much more difficult to do safely." ¶ Sullivan said that the state will not allow drilling in the most environmentally sensitive areas, where whale migration and whale calving areas are.

Solvency: Oil Drilling

States can sufficiently do oil drilling—should be able to drill in the OCS

Dunlop 8
[Becky Norton, senior management team of The Heritage Foundation as Vice President for External Relations, "Offshore Drilling: An Alternative to Funding Terrorism," Heritage Foundation -- October 30 -- http://www.heritage.org/about/speeches/offshore-drilling-an-alternative-to-funding-terrorism] JAKE LEE
What this issue comes down to is Constitutional **federalism.** It needs to be accepted that **the states can responsibly control and maintain their own waters instead of being micromanaged from above**. Increasing energy supply is a necessary step that **the U**nited **S**tates **must take to be ensured of continued and new economic growth. It is ridiculous to think that with America's current mobile workforce infrastructure** we can simply turn off all the gas pumps overnight and wake up **the next morning on a renewable energy source. We are working on renewable energy. And** certainly even more needs to be done. But in the interim, that transition can be made easier with the production of our own fuels to ease the burden on the average **American at the pump. In addition, producing more of our own energy means that we will not have to depend on imports from country's that do not have our interests in mind.** It is a very serious matter the possibility that taxpayers and consumers **are putting dollars into the hands of those who support terrorism and seek to undermine the United States**. **These include of course, Saudi Arabia and Venezuela. Becoming a nation in which America can be much more self reliant for its energy needs prevents the potential funding of those who wish to destroy us. We can and should have trading relationships for energy with other nations but they should be ones we deem to be friends and allies in the quest for greater human liberty**. ¶ When I worked with Governor George Allen in Virginia we realized early with the EPA that a one-size-fits-all blanket policy does not work. How could it? When you look over the landscape of our nation, it should be apparent that what works for the beaches of Florida is most likely not going to be appropriate for the Black Hills of South Dakota. The states should decide what policies best work for their citizens and their environment. ¶ **Under the policy I advocate, states would have option of choosing how to deal with their Outer Continental Shelf lands, and the benefits of permitting drilling would go to the states. In a state like Florida, where there are objections to energy development**, there would be the option of not drilling but I would argue that by delegating these decisions to the local level, **Florida's citizens** would have more of a voice in how the drilling **was conducted** and how the revenues **would be spent. By letting the state decide how to go about developing OCS**, citizens can hold their elected legislators accountable. **If Floridians disapprove of how a legislator stands on OCS development**, they can vote him out in the next election. Or conversely, if **the drilling produces more revenue it can be used for something like the Everglades Restoration of improving the stewardship of other state resources, or even reducing the tax burden on Floridians**. Santa **Barbara County in California recently reversed their stand on offshore drilling and passed resolution supporting more drilling**. Even with the federal moratoria lifted on Oct 1st, current Washington policy dictates that a federal regulator knows better. ¶ **More importantly is the matter of revenue. Currently, the federal government receives the revenue derived from OCS energy production. Bills like H.R.6899 would continue this trend.** In addition, it would strip the oil companies of $18 billion in tax breaks leaving both the states and oil companies with little incentive to allow or explore drilling, respectively. ¶ **I purpose that the federal government would no longer receive a cut of the money until the resources were developed and then its "cut" would come in the form of tax revenue generated by increased economic activity. The simple fact would be that if OCS has been removed from federal jurisdiction, each state would receive 80 percent of the revenues generated from production off its shore**. It would share the remaining 20 percent with other states. ¶ Obviously, a revenue-sharing structure of this

sort would find critics in the federal government, which would lose roughly $5 billion each year. Many big government environmentalists would object because the federal government uses some of these funds for environmental purposes, like the Land and Water Conservation Fund and the National Historic Preservation Fund. **Without OCS revenues, they would argue, these programs would lose important income. ¶ My response to these critics would be that I would rather have these revenues in the hands of the states and not the federal government**. When the states control the money, they would be free to use it for the purposes they see fit. In many cases, this money could be used to fund environmental initiatives that are made to fit the specific needs of the states as determined by their governors and state legislatures. And, if citizens are not pleased with the way these revenues are being spent, they can simply elect new officials. It's a much better system than when the policy is centered in Washington, D.C. with bureaucrats who neither knew nor frankly care what states, localities and citizens want or need. ¶ **Current OCS policy is dictated by Washington and is a complex maze of bureaucratic regulations even without the moratorium. In the case of OCS, a simple policy is the best policy**. The federal government should cede its authority to the states. ¶ Let's allow the states to decide what to do with their lands. ¶ **Let's stop the micromanagement, and understand that those at the state level will without a shadow of a doubt responsibly take care of their environment, their home**. ¶ Let states use new tax revenues from drilling to reduce taxes on entrepreneurs, so **they can fund and develop all matter of energy sources and infrastructure and increase the invention of new and better technologies**. ¶ Let's take the opportunity to lower current fuel costs to bridge the gap. ¶ **Let's finally increase development of our resources – grow our economy and trade with allies of human liberty rather than funding those that support terrorism and deny freedom to their own people.**
¶

Congress should hand authority of oil drilling to the states—states solve best

Dunlop 5

[Becky Norton, senior management team of The Heritage Foundation as Vice President for External Relations, "Improve the Environment... Leave it to the States... and the People" Heritage Foundation -- April 20 -- www.heritage.org/about/speeches/improve-the-environment-leave-it-to-the-states-and-the-people|JAKE LEE

What can Congress do to more effectively deal with some of the remaining environmental challenges? To begin with, **Congress needs to turn** even **more authority over to the states** as they begin revising the Endangered Species Act, the Clean Water Act, and the Clean Air Act. **Congressmen and women should look for ways to give states incentives to be excellent and wise managers of our natural resources**.¶ **One particular piece of legislation** of note could improve **America's access to its own oil resources** – Seacor[7]. The idea of Seacor is to give **coastal states the authority to approve off-shore drilling** out to the 200-mile limit, which is the point where **America has control of the ocean and ocean bottom. There are enough oil and gas resources in that area of the United States to make America energy independent. We have improved and sophisticated ways of extracting oil and gas from environmentally sensitive areas in cost-effective ways. The goal of this legislation is to pass on royalties from oil and gas production to the states to be invested in environmental improvements**. It could pay the bill for the Everglades restoration plan, for example. Of course, a portion of the revenue generated needs to come to inland states, as well, because off-shore resources within the 200 mile limit belong to all Americans.¶ Seacor is an innovative way of thinking. It uses the best new technologies available today. It ensures that the states are overseeing the exploration so they can be satisfied that it is being done in a manner that is compatible with the desires of their citizens. A portion of the value of the extracted resources then can be used to improve the environment of each state as its representatives see fit.¶ In closing, I would like to mention a report that the American Enterprise Institute and the Pacific Research Institute publish annually, The Index of Leading Environmental Indicators.[8] The most recent Index was released in late April 2005. The report catalogues continuing improvements in environmental quality in the United States of America. If you take the time to look it over, you will be impressed with the progress shown. Hopefully, you also will be inspired to do more to make certain that America continues to enjoy economic growth and environmental improvements.¶ The United States leads the rest of the world economically and environmentally. We offer opportunities for the rest of the world. We have demonstrated that a wealthier society is a healthier society -- a society that is good for the environment and good for the people. We should be upbeat but we should also look for ways to

continue this record of economic growth and environmental improvement. In my view, **this can best be accomplished by leaving environmental policy to the state**

Solvency: OSW

Massachusetts can do offshore wind—5 warrants, plus overcome all the tech barriers on the solvency flow

CESA 13
[Clean Energy States Alliance is a national nonprofit coalition of state and municipal clean energy funds working with federal, regional, industry, and other stakeholders to promote clean energy markets and technologies "Massachusetts Opportunities for Offshore Wind Businesses" 2013 http://www.cesa.org/assets/2013-Files/OSW/DW-OSW-State-Profiles/Massachusettsfinal.pdf]
JAKE LEE
Massachusetts has set an ambitious agenda aimed at becoming a national hub **for offshore wind development**. Adjacent to the largest offshore wind energy areas along the East Coast, Massachusetts is home to a robust venture capital community, hosts a concentration of world- class research and technology institutions, and possesses the nation's most highly skilled workforce, including a strong maritime industry sector. Specific advantages include: ¶ 1. **Massachusetts has developed nation-leading policies to support and incentivize offshore wind development in the federal waters just off its coast, including nation-leading green- house gas emissions reduction targets,** an aggressive Renewable Portfolio Standard, and requirements for utilities to enter into long-term contracts for renewable energy. 2**. Massachusetts is home to a significant brain trust in renewable energy development – including two of the nation's leading academic institutions on wind research:** the University of Massachusetts **(UMASS) Amherst and the Massachusetts Institute for Technology, as well as the world's largest nonprofit oceanography center**, the Woods Hole Oceanographic Institute, and a leading ocean research institution in UMASS Dartmouth's School for Marine Science and Technology. 3**. Massachusetts is home to Cape Wind, which is expected to be America's first commercial offshore wind project. The project has received federal and state permits, and power purchase agreements for 77.5% of its generated power**. **As the project nears construction, Massachusetts is beginning to experience an accelerated migration of offshore wind industry talent, technology, capital, and manufacturing to the state**. 4**. Massachusetts has the largest offshore wind planning area of any state along the East Coast, totaling almost 1,200 square miles. The Massachusetts Offshore Wind Energy Area has attracted expression of interest from ten US and European offshore wind development companies** including Arcadia Offshore Massachusetts, Condor Wind Energy, Deepwater Wind New England, Energy Management Inc., enXco Development Corporation, Fishermen's Energy, Iberdrola Renewables, Neptune Wind, Offshore MW, and US Mainstream Renew- able Power Offshore. Additionally, Massachusetts is partnering with Rhode Island on the "Area of Mutual Interest," which spans 260 square miles. 5**. Massachusetts is a leader in ocean planning. In 2010, the state released the Massachusetts Ocean Management Plan, the nation's first comprehensive plan to protect critical marine resources** and set standards for the development of community and commercial-scale offshore wind energy. **In partnership with the Bureau of Ocean Energy Management, the Commonwealth has led a Task Force on Offshore Renewable Energy since** 2009 (see below). Further, Massachusetts is conducting science-based surveys of marine mammals, ¶ 2 ¶ avifauna, and benthic habitat in order to support the responsible siting of offshore wind projects. ¶ **Looking beyond these policies and planning efforts, Massachusetts is poised to help establish the infrastructure and workforce that will build and operate its offshore wind energy system:** ¶ 1. **Massachusetts is already the base for a growing national and international hub for offshore wind industry companies and is home to Siemens Offshore North America, Vestas Wind Systems Research & Development, Global Marine Energy,** TPI Composites, Mass Tank, American Superconductor, Second Wind, and Hi-Def,

among others. **2. Massachusetts is home to the Wind Technology Testing Center, the largest enclosed wind blade testing facility in the world, capable of testing wind blades the length of a football field**. The project was made possible through funding from US Department of Energy and the Massachusetts Clean Energy Center. **3. Massachusetts is planning the construction of the New Bedford Marine Commerce Terminal, the first facility in the United States built specifically to support the assembly, construction, and deployment of offshore wind projects. Groundbreaking is expected to begin in the last quarter of 2012. 4. Massachusetts is partnering with the development community, industry and academia to drive down the cost of offshore wind through advanced technology demonstration projects, as well as monitoring and analysis of first generation projects as they are installed.** ¶ Further, Massachusetts is an excellent place to do business for companies in technology- oriented industries. Perhaps most notably, the state is a center for innovation and has helped incubate the computer, biotechnology, and clean energy industries. **To serve growing companies, Massachusetts hosts a strong financial services sector that provides expertise, funding, and assistance to new enterprises.** Because Massachusetts has a higher percentage of college graduates than any other state, companies can draw on a skilled, experienced, technical work-force with strengths in such key fields as machine tooling, marine technology, and engineering. **The state offers an outstanding quality of life, which attracts talent from across the globe. Finally, Massachusetts offers direct flights to all East Coast cities** and most European capitals. ¶ **Massachusetts-based private sector entities especially relevant to the offshore wind industry include the US Offshore Wind Collaborative** (www.usowc.org), a nonprofit organization that facilitates information sharing among stakeholders interested in offshore wind development in the United States, especially along the Atlantic coast, and the New England Clean Energy Council (www.cleanenergycouncil.org), which provides services to and advocacy for the state's and the region's rapidly growing clean energy industry.

Solvency: OSW (Rhode Island)

States can do Offshore wind—Planning right now

Danko 5/12 [Pete Danko is a staff writer for Breaking Energy "Deepwater: Rhode Island Offshore Wind Farm Will Be First" May 12, 2014 http://breakingenergy.com/2014/05/12/deepwater-rhode-island-offshore-wind-farm-will-be-first/] JAKE LEE

"Steel in the water" – so far, it's been but a dream for U.S. offshore wind power, but developers of a project off Rhode Island are doubling down on their claim to be on course to make it happen. **Soon**.¶ Deepwater Wind is embarked on a plan – hatched in 2008 – **to build a 30-megawatt wind farm three miles off Block Island in Rhode Island waters,** and state officials last week signed off on permits related to water quality, the installation of a transmission cable and onshore construction activities. In a statement, chief executive Jeffrey Grybowski called the permitting a "major step forward for" the five-turbine array.¶ "Momentum for the project is strong and we are moving closer to having 'steel in the water,'" Grybowski said, reiterating his belief that power will be coming ashore at Narragansett in 2016.¶ It does bear noting that in 2012, Deepwater had forecast that the Block Island turbines would be spinning in 2014. So stuff happens. But the company seems to be facing none of the well-financed challenges that have plagued Cape Wind project up the coast in Massachusetts, long expected to become the first U.S. offshore wind farm.¶ **Cape Wind's developers have been slogging away since 2001 and only now appear close to beginning construction of the 486-MW project**. They're eyeing commissioning in 2016, as well.¶ Meanwhile, three other offshore projects suddenly appear viable – not in 2016, but perhaps by 2017. That's the **U.S. D**epartment **o**f **E**nergy's **goal with the grants of up to $47 million apiece that it awarded last week to projects in New Jersey, Virginia and Oregon**.¶ The three all use novel technologies that the DOE hopes could lead to cheaper offshore wind. As it is, the stuff is expensive, at least on its face: **National Grid has agreed to long-term contracts to buy the Block Island power at 24.4 cents per kilowatt-hour, and a portion of Cape Wind's power output at 18.7 cents**/kWh. In both cases, the price will rise 3.5 percent annually, as well.¶ Riffgat Offshore Wind Farm Nears Completion¶ Deepwater will develop one of those DOE-backed projects, the 30-MW Oregon array that will use Principle Power's floating platform technology.¶ "**Deepwater Wind's Block Island Wind Farm is jumpstarting the East Coast offshore wind industry – where water depths are suitable for fixed foundations – the WindFloat Pacific project** will similarly act as a catalyst for large-scale floating offshore wind farms in the deep waters of the Pacific Ocean that are unsuitable for fixed foundations," the company said.¶ To get their full $47 million from the DOE – less than a quarter of the funding it will take to build the Oregon project – Deepwater and Principle Power will need to have a power purchaser and all their permitting in place within a year.¶ **Meanwhile, Deepwater isn't quite through the regulatory thickets in Rhode Island. According to the company, it still needs "assent from the Rhode Island Coastal Resources Management Council,** as well as approvals from the U.S. Department of the Interior's Bureau of Ocean Energy Management and the U.S. Army Corps of Engineers," but it anticipates having those permits in place in the next month or so.¶ **The Block Island Wind Farm is a stepping stone of sorts for Deepwater, which last summer won the first competitive lease sale for renewable energy in U.S. waters, consisting of two parcels off Massachusetts and Rhode Island**, **and plans to install up to 200 turbines there that could put out a gigawatt of power. The hope is to begin construction in 2017 and be in operation perhaps as early as the following year.**

Rhode Island is the best—pushing the offshore wind industry

Grybowski 4/3 [Jeffery Grybowski is chief executive of Deepwater Wind. "R.I. jumpstarts offshore wind industry" April 3, 2014 http://dwwind.com/deepwater-news/ri-jumpstarts] JAKE LEE

Securing cost-effective, clean and reliable energy sources is one of the most critical issues facing our nation. Most agree that a sensible, long-term energy plan for America must include a healthy mix of domestic fuel sources, including such renewable energy as wind and solar, as well as such traditional sources as natural gas. **In New England**, we do not have huge natural stores of traditional fossil fuels, but we do have many miles of coastline and some of the **East Coast's strongest offshore winds.**¶ **Today, 55 offshore wind farms are in operation off northern Europe,**

producing clean energy for hundreds of thousands of homes across the Continent and powering a homegrown jobs engine. But the U.S. has yet to install even its first offshore wind farm. **That will change in the near future: Rhode Island is poised to become the epicenter of the new U.S. offshore-wind industry.**¶ That's because Deepwater Wind's Block Island Wind Farm is on schedule to become the first U.S. offshore wind farm installed in this country. **When complete, this five-turbine project, three miles southeast of Block Island, will produce enough clean energy to power 17,000 homes, for an estimated 20 years or more. It will also reduce electric rates on Block Island** by an estimated 40 percent and connect the island to the mainland electricity grid for the first time ever.¶ **This year, we hope to receive all of the state and federal approvals necessary for this project. We expect that initial construction will begin late next year, with wind turbines spinning off Block Island by the fall of 2015**.¶ To date, Deepwater Wind has invested $25 million in private funds in this project. **In all, we expect to invest over a quarter of a billion dollars — one of the largest private investments in Rhode Island history. And our investors bear all of the risk of the project's success — not the taxpayers.¶ We expect that the Block Island Wind Farm will be the first of several offshore wind farms built along the East Coast.** Offshore wind represents the East Coast's best local, reliable and clean energy source for several important reasons. First, the winds off our coastline are among the strongest and steadiest for power generation in the nation. Where typical onshore wind farms might be expected to run at 35 percent efficiency in an average year, our analysis of the Block Island site leads us to predict that our efficiency will probably be more than 45 percent.¶ Second, offshore wind is the best energy choice for our environment. Wind power helps greatly to reduce the emission of harmful pollutants in our region. The Block Island Wind Farm will displace dirtier power sources, and reduce carbon-dioxide and other greenhouse-gas emissions.¶ Third, by generating our own power locally, we will create jobs locally. Right now, 35,000 people work in the offshore-wind business in northern Europe. Entire cities have been transformed into industrial hubs. We can do that here. That is why Deepwater Wind has paid hundreds of thousands of dollars to the state-owned Quonset Point to reserve space for our manufacturing and assembly hub. **The Block Island Wind Farm will create about 200 local construction jobs in addition to long-term maintenance jobs. This project will let Rhode Island acquire the skills needed to build more offshore wind projects in New England, creating many more jobs**.¶ Development of a first-of-its-kind project is not always easy or fast but more important than speed is getting the project right. **Starting in 2009, we launched a comprehensive $7 million suite of environmental surveys to ensure that construction and operation of the wind farm will not hurt wildlife, the environment or other users of the ocean. Moreover, Deepwater Wind contributed over $3 million to the state's ocean mapping effort. We are proud to have the support of many local and national environmental organizations.¶ Admittedly, the cost of power from this project will probably be higher than the cost of already built traditional fossil-fuels power plants today.** After all, this project is the first of its kind in the nation and, as a demonstration-scale project, we can't yet take advantage of economies of scale. But the impact on ratepayers is low, since this project will represent only about 1.5 percent of the power supply that the Ocean State needs. And as our industry grows and larger wind farms are built, pricing for offshore wind will go down, making it cost-competitive with other new sources of energy. But we can't get there without starting somewhere. **And the Block Island Wind Farm is that start.¶ Rhode Island is the sweet spot for offshore wind: Quonset Point, world-class wind resources, a long tradition of marine trades, and the leadership needed to get this started. The Block Island Wind Farm will put those assets to use, and jumpstart a new industry. We encourage all Rhode Islanders who support renewable energy and green jobs to add their voices to this important conversation**.

The East Coast States are ready to build offshore wind

DiSavino 11
[Scott DiSavino is a staff writer for Reuters "Deepwater to build first U.S. offshore wind farm" October 13, 2011 http://www.reuters.com/article/2011/10/13/us-deepwater-wind-idUSTRE79C0YC20111013] JAKE LEE
(Reuters) - **Deepwater Wind is racing to build the first U.S. offshore wind farm off Rhode Island and hopes to parlay that into a string of East Coast farms** that could partially replace embattled

nuclear power plants.¶ **The privately held U.S. wind power developer plans to begin construction of the $205 million, 30-megawatt Block Island project in 2013 or 2014, ahead of a farm proposed by Cape Wind** which had been expected to be the nation's first offshore facility, according to Deepwater's CEO.¶ "**Believe it or not, the first offshore wind farm will probably happen in little Rhode Island,"** CEO William Moore told Reuters in an interview.¶ The energy generated by **the 30-megawatt Block Island project will be enough to power about 10,000 homes in Rhode Island**. **The company is planning other projects off the Atlantic Coast as well, with three 1,000-meagawatt projects currently in the works.¶ The company says a 1,000-megawatt offshore wind project will produce enough electricity for 350,000 homes.¶ Deepwater, majority owned by New York investment firm DE Shaw and minority owned by onshore wind developer First Wind, gained ground against other developers after Rhode Island picked the company, based in the state capitol city of Providence, as its preferred developer.¶ Rhode Island was not the first state to consider the clean energy prospects offered by offshore wind farms, but it moved decisively after concluding offshore wind power should be part of its energy mix.¶ Moore said Deepwater, as Rhode Island's preferred developer, last year submitted an unsolicited application with the** U.S. Bureau of Ocean Energy Management (**BOEM) for a lease to build a separate 1,000-MW Deepwater Wind Energy Center in federal waters off Rhode Island and Massachusetts**.¶ "The federal government has said it will give consideration to states that have conducted these kind of preferred developer competitions in terms of their decision about who can lease the federal waters," Moore said.¶ **Moore said the second Rhode Island project would consist of about 200 turbines and could be connected via cables to the Connecticut, Rhode Island, Massachusetts and New York power grids.¶ "In order to get a competitive cost level**, we need to get to scale, which means 750 to 1,000 MW, and at that size you are better off trying to sell into multiple markets," **Moore said.¶ The company has already bid the Deepwater project into the Long Island Power Authority's request for proposals for new energy sources for its New York customers on Long Island.¶ EYES ON THE BIG APPLE¶ While Cape Wind still expects its 420-MW project in Massachusetts** to be the nation's first utility-scale offshore wind farm, **Deepwater hopes its small Block Island wind farm will be stepping stone to bigger projects**.¶ With New York Gov. Andrew Cuomo pressing to shut the 2,065-MW Indian Point nuclear power plant in 2013 and 2015 when its two reactors' operating licenses expire, Moore is proposing a 1,000-MW offshore wind project near New York City.¶ Entergy, the nuclear plant's owner, wants Indian Point to run for another 20 years and is seeking new licenses for the reactors from federal nuclear regulators.¶ "**There is a lot of excitement in New York because the possibility Indian Point may be retired in coming years," Moore said**.¶ "That has created a bit of an opening for offshore wind to participate in whatever process New York conducts to replace the energy from the nuclear plant."¶ Moore said Deepwater's Hudson Canyon Wind Farm will participate in the New York Power Authority's competition to select a developer, probably in 2013.¶ **In addition, Deepwater and its partner New Jersey energy company Public Service Enterprise Group have already filed for a federal lease to build their proposed 1,000 MW Garden State Offshore Energy project off New Jersey.¶ Moore expects New Jersey regulators will conduct a competition and select a preferred developer in 2012**. He also said BOEM could issue a lease for New Jersey later in 2012.¶ OBSTACLES¶ While the allure of clean wind energy is great, developers have faced several obstacles, including significantly higher costs than natural gas and even onshore wind power generators.¶ **It can cost about six times more money to build an offshore wind farm ($6,000 per kilowatt) compared to an efficient natural gas-fired power plant ($1,000 per kilowatt).¶ Once the gas plant is built it can be available 24 hours a day, seven days a week.** The wind farm is only available when the wind is blowing.¶ Moore said a 1,000 MW offshore wind project could cost about $4 billion to $5 billion.¶ **While proposed offshore projects are generally closer to the nation's biggest population centers and have access to more consistent, stronger winds, it costs about twice as much to build an offshore wind farm than an onshore wind farm.¶ Developers also must lock up customers before breaking ground. UK-based energy company National Grid, which owns utilities in New England,**

has agreed to buy all the output from Block Island under a 20-year agreement and half of the power from Cape Wind.

Solvency: Ports

And, the counterplan solves ports – states have authority

Sherman 2000
(Roberts Director of Research and Information Services American Association of Port Authorities "SEAPORT GOVERNANCE IN THE UNITED STATES AND CANADA," http://www.aapa-ports.org/files/PDFs/governance_uscan.pdf)

To observers from abroad, even experienced port specialists, **the seaport system of the United States might seem at first glance to be anything but a system. In other countries, port systems are** typically small by comparison and commonly **subject to** direct **control by national authority**. **The situation in the United States differs** in several crucial respects. First is simply the size of the industry itself--183 commercial deepdraft ports dispersed along the U.S. Atlantic, Gulf, Pacific and Great Lake coasts. Included in that number, too, are the seaports of Alaska, Guam, Hawaii, Puerto Rico, Saipan and the U.S. Virgin Islands. Here, unlike many countries, **there is no national port authority**. **Rather authority is diffused throughout all three levels of government-federal, state and local**. **That stems from the federal character of the U.S. Constitution**, **which reserves certain powers for the** national government and others strictly for the **states**. The Canadian system, by contrast, is subject to the general purview of the central government and more specifically to enactments of the national parliament. The enactment in June 1998 of the Canada Marine Act changed somewhat the character of the federal port system and permits the divestment of many ports previously administered by the Ministry of Transport to non-federal public and private entities. However, the nation's major seaports are governed and managed by federal port authorities and ultimate statutory authority constitutionally remains with Parliament. Constitutional Parameters: **The U.S. Constitution does grant the federal government exclusive jurisdiction over the navigable waters of the United States,** including its deepdraft channels and harbors--authority delegated primarily to the Coast Guard and the U.S. Army Corps of Engineers. **But federal jurisdiction over harbors stops at the water's edge. Port authorities in the United States are instrumentalities of state** or local **government established by enactment or grants of authority by the state legislature**. **Neither Congress nor any federal agency has the power, or even the right, to appoint or dismiss port commissioners or staff members, or to amend, alter or repeal a port authority charter**. Certain port activities are, of course, subject to federal law and jurisdiction, particularly those pertaining to foreign and interstate commerce.

Solvency: Regulations

States have the ability to regulate

Zimmerman 2009 Joseph F., Professor of Political Science Rockefeller College "Congressional Devolution of Powers and Preemption of State Regulatory Powers: Countervailing Trends" Presented at the annual meeting of the American Political Science Association, Toronto, Ontario, Canada, September 5, 2009. http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1450981// GD

Devolution of Powers **Textbooks on the federal system explain the powers delegated by the United States Constitution to Congress and the President by Articles I and II**, respectively, **and note the Tenth Amendment reserves unspecified powers to the states.** Generally omitted are powers devolved by the constitution to each state legislature to (1) determine the times, places, and manner of holding elections for United States Senators and Representatives subject to alteration by Congress, (2) enter into compacts with sister states with the consent of Congress, (3) appoint presidential and vice presidential electors, (4) require Congress to call a convention for the purpose of proposing constitutional amendments, and (5) regulate or prohibit drinking of intoxicating liquors.2 **Unless constitutionally prohibited, a national legislature may devolve its legislative, executive, and administrative powers to one or more territorial governmental units**.3 **The above constitutionally devolved powers are outweighed in importance by congressionally devolved powers, including consent to interstate compacts allowing states to initiate actions otherwise unconstitutional.**4 2 Each devolution statute is relatively short in length and may be classified as one of following eleven types. **A statute may (1) turn over a specified regulatory responsibility to the states,** (2) include one or more savings clauses preventing complete prevention of a field such as a declaration of intent not to preempt, (3) return to states regulatory enforcement authority in a new completely preempted field, (4) **authorize a national department or agency to delegate regulatory primacy to states,** (5) **grant authority to states to establish regulatory standards more stringent than national standards without the approval of a federal agency**, (6) permit a state veto of a national government officer's decision subject to an override by Congress, (7) exempt from preemption a uniform state law enacted by a state legislature, (8) include an opt-in provision and/or an opt-out provision in a preemption statute, (9) empower governors to initiate actions not authorized by their respective state constitution and statutes, (10) grant authority to each state attorney general to file a law suit to enforce a preemption statute, and (11) **authorize a state agency to administer a federal program.**

Solvency: Renewables

State tax incentives spur renewable investment

Brown et al 2002
Elizabeth Brown, Patrick Quinlan, Harvey M. Sachs and Daniel Williams American Council for an Energy-Efficient EconomyMarch 2002 ("Tax Credits for Energy Efficiency and Green Buildings: Opportunities for State Action" American Council for an Energy-Efficient Economy http://www.eceee.org/conference_proceedings/ACEEE_buildings/2002/Panel_9/p9_2) // GD
States play a fundamental role in addressing energy use and the adoption of energy efficiency measures at the regional and local level. They can provide tax incentives that foster technology options that will meet the needs of their residents. This paper describes the current status of energy efficiency and "green building" tax incentives that states offer as of the end of 2001. Our goal is to assist state policymakers to design and evaluate their own programs by providing insights about current programs in other states. **Properly designed state tax incentives have both short-term and long-range benefits. In the short term, they can effectively increase the market share of advanced technologies and practices** that otherwise would be harder for the state's residents, businesses, and other organizations to find. **By themselves, the state's actions increase the visibility of the technologies and validate them with the state's credibility**. At some point, the market share is large enough that the technologies or practices are clearly cost-effective and have broad support from those who profit from it. By then, state tax credits may no longer be needed, and building codes and other regulatory mechanisms can be revised to make use of the technologies or practices mandatory (Quinlan, Geller, and Nadel 2001). A **long-term benefit of state-funded energy efficiency incentive programs is the increase in consumer choices due to encouraging innovation in the private sector. The programs benefit state energy, economic, and environmental objectives**. The private sector needs encouragement to provide products and services to address broader energy security, system reliability, environmental, and economic goals. In particular, market failures limit private investment in cost-effective efficiency measures; for example, third-party decision makers in many situations discourage the adoption of efficient technologies. **Tax credits can accelerate customer acceptance and increase market share for high-efficiency technologies and practices.**

State efforts to spur renewables via tax incentive empirically solve

Brown et al 2002
Elizabeth Brown, Patrick Quinlan, Harvey M. Sachs and Daniel Williams American Council for an Energy-Efficient EconomyMarch 2002 ("Tax Credits for Energy Efficiency and Green Buildings: Opportunities for State Action" American Council for an Energy-Efficient Economy http://www.eceee.org/conference_proceedings/ACEEE_buildings/2002/Panel_9/p9_2) // GD
Energy efficiency tax credits enacted in other states can serve as starting points for new legislation, but a common theme we observed is the importance of considering the specific needs of the state in designing legislation. **Tax credit programs should be tailored to individual state economic, energy and environmental objectives.** The most common energy efficiency tax credits are **green buildings tax credits and efficient appliances credits.** These programs **offer large opportunities to encourage energy efficiency while minimizing lost revenue. Further, because other states have already used these approaches and programs are already in place, adapting the programs used in those states is generally easier and more effective than developing new approaches.**

State renewable tax credits solve better – tailored to regional climate variations

Brown et al 2002

Elizabeth Brown, Patrick Quinlan, Harvey M. Sachs and Daniel Williams American Council for an Energy-Efficient EconomyMarch 2002 ("Tax Credits for Energy Efficiency and Green Buildings: Opportunities for State Action" American Council for an Energy-Efficient Economy http://www.eceee.org/conference_proceedings/ACEEE_buildings/2002/Panel_9/p9_2) // GD

Although the federal government provides research, development, and implementation assistance for energy efficiency objectives of general national interest, the **states play a fundamental role in addressing energy use and the deployment of energy efficiency measures. Since local climate and resources strongly influence energy use and technology choices, states are well suited to provide incentives that foster technology options matched to the needs of their residents.** With the recent rise in national attention to energy policy driven by volatile energy prices, electricity reliability concerns, and the release of the Bush Administration energy plan (National Energy Policy Development Group 2001), **state policymakers and state-level advocates are increasingly looking for legislative actions they can take to help address reliability** and price stability challenges through energy efficiency. **State actions** could **include** the following: • Establishing a public benefit fund (a fund dedicated to providing support for energy efficiency, low-income programs, and other objectives, generally funded by a very small tax on electricity transmission services);. • Direct state expenditures: these could include direct state investments (e.g., to upgrade performance of government facilities) or a state loan program. • **Establishing state tax credits**, reductions, or deductions **for efficient products, techniques, and services.**

Cooperation with the DOD solve economic challenges

Governor Douglas and Senate President Tomblin 06

(Jim, Early Ray, governener and senate president of Vermont, 12/3, "THE COUNCIL OF STATE GOVERNMENTS RESOLUTION ON RENEWABLE ENERGY DEVELOPMENT AT DEPARTMENT OF DEFENSE INSTALLATIONS" http://www.csg.org/knowledgecenter/docs/DoDRenewableEnergyResolution.pdf

Opportunities for collaboration with DoD installations may **exist for states seeking to encourage renewable energy developmen**t. In its March 2006 Renewable Energy Assessment Status Report Update to Congress, the DoD stated that it is interested in facilitating renewable energy projects on its lands, where compatible with missions, through lease arrangements and the use of alternative financing with private sector partners. DoD installations typically are reliable and stable consumers of electricity as well as dependable contributors to states' economies. **By coordinating renewable energy portfolio development with the DoD as a major energy consumer**, **states could reap economic benefits. State governments can help encourage the development of renewable energy projects in many ways: (1) through financial incentives such as grants, loans, rebates, industry recruitment, bond programs, tax incentives and production incentives; (2) through regulatory incentives such as public benefits funds, renewable portfolio standards, net metering, extension analysis, generation disclosure, contractor licensing, equipment certification, solar/wind access laws, construction and design standards, required utility green power options and green power purchasing/aggregation policies.** Because energy costs greatly impact the military as well as the citizens of each state, and because **many state and local economies depend on revenues directly and indirectly flowing from military facilities and personnel, encouraging renewable energy projects in cooperation with DoD installations is in the best interests of the states and the nation.**

States can do renewable projects—California and Oregon prove

Klass and Wilson 12

[Alexandra B. Klass is a Julius E. Davis Professor of Law, University of Minnesota Law School. Elizabeth J. Wilson is an Associate Professor of Energy and Environmental Policy and Law, Humphrey School of Public Affairs, University of Minnesota. "Interstate Transmission Challenges for Renewable Energy: A Federalism Mismatch" November 2012 Lexis] JAKE LEE

The situation in the West is perhaps more challenging than the Midwest. **Although areas of the West Coast have significant wind resources, the West has a much larger population to serve, and California's new renewable energy man-dates likely can only be fulfilled through significant wind development** and transmission buildout both within and out-side of California. Indeed, California is an electricity importer, and its demand affects much of the transmission [*1837] planning in the West. n180 As of August 2012, **California had 4,425 MW of wind energy capacity online, rank-ing it third in the nation for total installed MW** of wind energy. n181 However, due to its large electricity demand, in 2011 only 4.0% of California's electricity demand was generated by wind power, **ranking it sixteenth among the states in percentage of state energy derived from wind**. n182 Amended in 2011, **California has one of the most aggressive RPSs** in the nation. n183 With a deadline of January 1, 2012, to **set utility-specific targets, the standard requires 33% of electricity sold in California to be generated by renewable energy** resources by 2020. n184 To help reach this standard, California has implemented additional incentives to promote renewable energy, such as feed-in tariffs that set procurement rates for renewable energy at prices comparable to that of natural gas. n185 Additionally, **California has created a structure of three "buckets" to meet the statutory obligations of the RPS: (1) RPS-qualifying products generated within the state or a California balancing authority, (2) products that are used to ensure power quality and provide incremental power, and (3) unbundled RECs (where the electric power is used separately from the environmental benefit, for example when wind energy is generated and used in Oregon,** but a California utility purchases the REC). n186 To comply with the RPS, Bucket 1 must account for 50% of compliance products (increasing to 75% by 2017), and the cumulative percentage of Buckets 2 and 3 must be limited to 25%. n187 These restrictions could affect the demand for renewable energy and the need for transmission lines in [*1838] the West. California has also created the Renewable Energy Transmission Initiative ("RETI") to identify transmission projects required to meet the RPS goals and to bring together transmission stakeholders to create a comprehensive transmission plan for California. n188¶ Southern California Edison is planning the biggest transmission project in California's history: the Tehachapi Re-newable Transmission Project. It will transport wind energy from the Tehachapi area of Kern County to Southern Cali-fornia Edison's power grid, which serves 14 million people. The $ 3.5 billion line would be capable of carrying 4,500 MW. n189 The California Public Utility Commission ("CPUC") approved the first phase of the project in March 2007, and construction of that phase is underway. n190 The next phase involves 173 miles of transmission lines. n191 The project will be very important for linking renewable energy to California demand centers. In June 2011, Google announced that it would increase its investment in the Alta Wind Energy Center ("AWEC") in Tehachapi by providing another $ 102 million to finance the 168 MW Alta V Project. This adds to the $ 55 million Google has already invested in wind power in the area. n192 Also in June 2011, San Diego Gas & Electric announced large solar contracts, one of which **will connect to the grid through the Tehachapi Renewable Transmission Project. n193 Despite the CPUC's approval of the project, Chino Hills sued to enforce its ability to grant right-of-way property rights, and to deny the CPUC's exclusive jurisdiction in this area. The state trial court held in 2010 that the CPUC had exclusive jurisdiction**, the court of appeals affirmed that decision in September 2011, and the California Supreme Court denied [*1839] review in January 2012. n194 During the pendency of the appeals, however the CPUC stopped construction on the project for purposes of conducting additional review for the portion of the project through Chino Hills. n195¶ As an electricity importer, California will likely also need to rely on neighboring states to meet its renewable energy needs, though the current structure of the **RPS limits the amount that can be generated outside of California. n196 While Arizona and Nevada can provide solar energy in the future if certain major projects come online, California has historically looked to Oregon for more immediately available wind energy**. Indeed, Oregon has exported approximately half of its wind power to California since 1998. n197 As of June 2012, Oregon had 2,820 MW of wind power online, ranking it seventh in the nation, and deriving 7.1% of its electricity from wind. n198 In 2007, Oregon required its largest electric utilities (PacifiCorp, Portland General Electric, and the Eugene Water and Electric Board) to ensure 5% of their retail electricity was renewable by 2011, and the utilities met this standard. n199 The requirement increases to 15% by 2015, 20% by 2020, and 25% by 2025. n200 Smaller utilities will also have to meet renewable energy standards, but the percentage of renewable energy is either 5% or 10% based on the size of the utility. n201 Companies in Oregon that do not comply with the **RPS are subject to a fine. n202 In 2010, Oregon began a pilot program for solar feed-in tariffs that offered payments by three participating utilities to [*1840] owners of solar energy systems for electricity produced by solar power.** n203 Through 2014, the payment rates are between $ 0.30 and $ 0.37/kWh. n204 Oregon also has both tax credits for renewable energy-equipment manufacturers n205 and "community renewable energy feasibility funds" n206

to support renewable energy development.¶ **While Oregon's policies have encouraged renewable growth, the state has not directly addressed the need for new transmission lines. n207 Similar to other states, "Oregon faces a growing schism between its lack of capacity to move en-ergy from renewable sources**, while current legislation, tax policies, and public demand are creating incentives and pressure to develop these renewable energy sources." n208 To address these issues, the Governor created the Oregon En-ergy Planning Council ("OEPC") in 2008. n209 **The first OEPC report, in December 2010, recommended "the state move forward with developing a comprehensive energy strategy to maintain its leadership in energy planning, conservation, and new renewable technology**." n210 The report made specific recommendations to improve Oregon's transmission line-siting process, including the creation of a stronger link between the state PUC and the state Energy Facility Siting Council to (1) better address the public's concerns regarding the [*1841] necessity of new transmission lines, (2) cre-ate new regulations to balance the objectives of multiple affected state agencies, (3) develop clear siting standards to make the application process both more predictable and better able to realize the public benefits of new transmission, (4) eliminate the lack of communication and multiple levels of review by different state agencies, and (5) create a "phased study approach" that allows applicants to move forward in their applications while various studies are being conducted. n211¶ As noted above, Oregon has exported approximately half of its wind-generated power to California since 1998. n212 As a result, Oregon imports much of its electricity from other Western states such as coal-fired power from Montana and Wyoming. n213 In the meantime, however, Google and others are in the process of developing the 845 MW **Shep-herd's Flat Wind Farm in Oregon, which is likely to be the largest in the world when completed. n214 The $ 2 billion pro-ject has received $ 100 million in funding from Google n215 as well as a $ 1.3 billion loan guarantee from the DOE. n216 The wind farm has received transmission rights**, and is slated to become operational by September 2012; n217 100% of the power generated from this farm will be exported to California. n218¶ The lack of transmission capacity in the Pacific Northwest region has become acute, and wind farms have been forced to curtail energy production on a rolling basis. n219 This occurred in the Pacific Northwest in 2011, with 100,000 MWh curtailed after a particularly wet winter, rapidly warming spring, and low electricity demand for that time of year. n220 The **massive amounts of hydroelectric power [*1842] swamped Bonneville Power Association's ("BPA") electric grid, causing BPA to curtail wind energy. n221 BPA insists that it did everything it could to incorporate wind into the sys-tem, but wind developers have built much faster than the Northwest Wind Integration Action Plan of 2007 predicted. n222 Wind farms filed a petition with FERC in the summer of 2011,** asking FERC to force BPA to honor its transmission contracts and undertake "negative pricing," which would involve paying utilities outside the region to shut down their own generation and take all of BPA's excess power. n223 BPA contended that such actions would increase its own cus-tomers' rates, which would not be fair since most power is sold out of state. n224 In December 2011, FERC ordered BPA to establish new policies to avoid curtailing transmission access for wind generation during periods of surplus hydro-power and found that BPA's actions constituted a discriminatory practice under the FPA. n225¶ **These developments in California and Oregon illustrate how states, even ones as large as California, cannot rely solely on their own renewable resources or transmission buildout to meet renewable energy goals. If Oregon is not suc-cessful in developing intrastate and interstate transmission, it will affect Oregon, California, and the entire Pacific Northwest**, as shown by the difficulties of utilizing the BPA grid. California is certainly acting as a "laboratory of de-mocracy" n226 with its aggressive **RPS, just as it has in many other areas of environmental protection, including vehicle emissions, smog, water-resource protection, and chemical regulation.** In those areas, however, California could experi-ment and make progress on its own. [*1843] In the area of renewable energy, because of its dependence on outside sources of electricity and a transmission system to bring that power to the state, it must rely on other states, **establish regional arrangements, seek federal assistance, and create an economic environment that encourages sufficient investment in transmission for the entire region.**

Solvency: Warming (Model.)

The states are leading the energy revolution now- primary state action key to global spillover

Dutzik et al 09
(Tony, Frontier Group, Environment America Research & Policy Center, Environment California Research & Policy Center December, "America on the Move State Leadership in the Fight Against Global Warming, and What it Means for the World", http://www.stateinnovation.org/Publications/All-Publications/2009-10-EnvironmentAmerica-AmericaontheMove.aspx)
The impact of state-level actions to reduce global warming pollution **is significant on a global scale.** A review of dozens of individual state policies, fed - eral policies based on state models, and new federal policies in which states will have key roles in implementation suggests that **state actions will reduce carbon dioxide emissions by approximately 536 million metric tons per year by 2020** . **That is more global warming pollution than is currently emitted annually by all but eight of the world's nations,** and rep - resents approximately 7 percent of U.S. global warming pollution in 2007. **America's clean energy revolution – led by the states – shows that the na - tion is ready to commit to the emission reductions science tells us are necessary to prevent the worst impacts of global warming. President Obama should build on these actions by working to forge a strong international agreement to address global warming** during the Copenhagen talks. In America's federal system of government, **states matter**. **State governments have an impor tant – often primary – role in setting environmental and energy policy in the United States**. **States have the power to limit carbon dioxide emis - sions, to regulate electric and natural gas utilities, to adopt standards for the energy performance of buildings and equipment, to regulate land use and transportation policy and, on a limited basis, to establish emission standards for vehicles**. Over the past decade, **states have begun to employ their power to reduce global warming pollution in a variety of ways.** As "laboratories of democra - cy," states have developed innovative policies to address global warming that have later been adopted by other states, or at the federal level. Six U.S. states, and one U.S. re - gion, have adopted enforceable caps on global warming pollution. Six U.S. states – California, Con - • necticut, Hawaii, Massachusetts, Maryland and New Jersey – have adopted binding caps on global warming pollution from their states' economies. Combined, these six states produce nearly a quarter of America's economic output and 13 percent of its fossil fuel-related carbon dioxide emissions. If these six states were a separate country, they would rank as the world's fifth-biggest economy and seventh- leading emitter of carbon dioxide. Collectively, these six **states have committed to reducing global warming pollution** by approximate - ly 13 percent below 2005 levels by 2020.

Federal action towards climate change fails alone- state lead on climate policies key to innovation

Dutzik et al 09

(Tony, Frontier Group, Environment America Research & Policy Center, Environment California Research & Policy Center December, "America on the Move State Leadership in the Fight Against Global Warming, and What it Means for the World", http://www.stateinnovation.org/Publications/All-Publications/2009-10-EnvironmentAmerica-AmericaontheMove.aspx)

To most observers, the above statement might seem nonsensical – even absurd. But **when the history of humanity's efforts to address global warming** is finally written, the Bush years may well be looked back upon as the time when America began to rise to the challenge. **The change certainly did not emanate from the White House.** George W. Bush withdrew the United States from the Kyoto Protocol, reneged on a campaign promise to regulate carbon dioxide as an air pollutant, and promoted energy policies designed to deepen America's dependence on fossil fuels. By any reason - able measure, the Bush administration's climate policies were an unmitigated disaster **– a failure of leadership with mas - sive consequences for the planet. But in America's 50 states,** where **the "rubber meets the road" on many areas of energy policy in our federal system** – **from utility regulation to transportation to home energy efficiency –** a different story was being written. There, building on **a legacy of state energy policy innova - tion** dating back to the mid-1970s, **states began to devise and implement strategies to shift to cleaner sources of energy and reduce global warming pollution**. While leading-edge states – particu - larly on the East and West coasts – moved first, **the clean energy revolution has spread rapidly** into America's heartland. Today, **most states have taken at least the first steps to encourage improved en - ergy efficiency in homes and businesses, spur the use of renewable energy, curb emissions from automobiles, and plan for future reductions in global warming pollution**. States had once been forced to steer their clean energy efforts into the head - wind created by the pro-fossil fuel poli - cies of the Bush administration. But with the arrival of the Obama administration, **state clean energy innovators now have the wind at their backs**. The first year of the new administration has seen the lift - ing of federal policies that once impeded state action, as well as the nationwide adoption of key clean energy policies ini - tially developed in the states. **States also have been given a key role** in implement - ing the specifics of President Obama's economic recovery strategy, which is built around the promise of enduring prosperity achieved through a transition to a clean energy economy. Taken together, **the actions initiated by the states,** coupled with the clean energy policies and programs implemented thus far by the Obama administration , **rival the scope and ambition of the actions taken to address global warming anywhere in the world** . Of course, there is far more work to be done. To date, the actions taken by the United States and the rest of the world pale in comparison to the challenge posed by global warming. The United States must implement mandatory emission re - ductions at the pace and scale science tells us are necessary to prevent the most dan - gerous impacts of global warming. The rest of the world must do the same. But make no mistake: it is the record of widespread state innovation and lead - ership on global warming over the past decade – not the recalcitrance of the Bush administration, nor even the slow legislative pace of a U.S. Senate that, in the American system of government, is uniquely sensitive to regional interests – that should characterize America's reputation before the world as the crucial negotiations begin in Copenhagen. Time and again, when the American people have been given the choice, they have demonstrated that they are ready to move the nation toward a clean energy economy and reduce global warming pol - lution. The states, America's laboratories of public policy, have demonstrated the path forward. **The Obama administra -**

tion is beginning to make good on the promise of renewed American leadership to meet the challenge of addressing global warming

States solve climate policies best

Northrop and Sassoon '8 [Michael Northrop is Program Director for Sustainable Development at the Rockefeller Brothers Fund. David Sassoon runs SolveClimate.com, a Web site dedicated to debating and advancing solutions to global warming. "States Take the Lead on Climate" June 2008 in Environment 360, the new online magazine form the Yale School of Forest & Environmental Studies. http://e360.yale.edu/content/feature.msp?id=2015] JAKE LEE

But the **states have far more to offer**. **They also have approved a host of energy-efficiency measures affecting all sectors of the economy**. For example, **one set of policies provides both emissions reductions** and substantial economic savings from the building sector through improved building codes, insulation and weatherization programs, and lighting retrofits. From the waste management sector, waste reduction and recycling programs yield similar two-pronged benefits.¶ These policies go hand-in-hand with others mandating that an increasing percentage of a state's energy come from renewable sources, such as solar and wind power. **Many states — chief among them California — have shown similar national leadership by significantly toughening auto emissions standards**, **leading Congress** to increase national vehicle standards last December and the Environmental Protection Agency (EPA) to challenge the states in court.¶ **The fact that so many states are acting with a similar impetus begs an important question: What would happen if you aggregated these policies and applied them on a national scale?¶ One study conducted by the** Center for Climate Strategies (**CCS) — a non-partisan group** that has worked on climate policymaking and analysis with many of these states — indicates that the adoption of a comprehensive, nationwide climate and energy policy would have substantial economic benefits. **Using data from 12 states that are leaders in the field of climate change and energy**, CSS calculated that were all 50 states to adopt similar rules and legislation, the aggregate economic savings would be $**25 billion. The nation could achieve a 33% reduction in projected greenhouse gas emissions by 2020 — a common interim target — and save money doing so.**¶ Overall, the 27 states that have either adopted or are working on climate plans have targeted greenhouse gas reductions of **50 to 85 percent between 2040 and 2100, and their shorter term projections place them on this path.¶ The states' experiences also can be incorporated into a national cap-and-trade scheme.** For example, in the first phase of the **European Union's Emissions Trading Scheme, the cap-and-trade mechanism increased costs without reducing emissions. Carbon credits had been over-allocated, so there was little pressure to make reductions; emitters**, however, realized profits by passing on the cost of carbon credits to consumers, even though the credits had been given to them for free. **Although a recalibration has since occurred and the lessons learned are being incorporated, it seems reasonable to expect that a US cap-and-trade system will encounter similar trials.**

General States Solvency Issues

Solvency: State Coordination

Coordination between states solves

Rachael E. **Salcido**. **2008**. Offshore Federalism and Ocean Industrialization. 82 Tul. L. Rev. 1355 (2007-2008) Offshore Federalism and Ocean Industrialization. Professor of Law Director, Sustainable Development Institute Director, Environmental Law Concentration B.A., J.D., University of California, Davis Professor Rachael Salcido is a scholar of environmental and natural resources law, with particular expertise in ocean and coastal law and ecosystem restoration. Her articles have appeared in prominent law journals and she is an active member of the Rocky Mountain Mineral Law Foundation. GD

4. Regional Governance **Another approach to alleviate state-federal conflict is to move towards greater reliance on regional governance mechanisms-a multistate, multijurisdictional approach**. To this end, **significant attention has been directed to expanding the regional council** 2008] 1429 TULANE LA W REVIEW **arrangements of the Magnuson-Stevens Fishery Conservation and Management Act.**4"3 Regional governance has already made some headway on managing fisheries through Regional Fishery Management Councils, albeit with mixed success in addressing overfishing. Policy reports by Pew and the USCOP have helped to encourage interest in regional governance, while recognizing the shortcomings of the existing Regional Fishery Management Councils.4 These councils have been slow to adopt significantly restrictive catch limits, and their composition has been criticized as overly dependent on fishing interests.8'5 Nonetheless, **the concept of multijurisdictional governance mechanisms recognizes the limits of using physical borders to manage ecosystems and transitory marine resources** (e.g., wildlife, fisheries, wind, and wave energy). As experts have explained in detail, **regional ocean governance is a way to promote ecosystem-based management by looking "comprehensively at ocean issues connected to one another by the ecosystem inhabitants and processes.**"" The Pew report suggested a regional governance model, initiated by using the existing regional fishery councils as a starting point. "7 **The report suggested a regional** 1430 [Vol. 82:1355 OFFSHORE FEDERALISM **approach coupled with building-block zoning-start with areas of the ocean that are already used, and manage conflicting uses there."**8 Building-block zoning then calls for moving on to zoning areas not in active use for potential future uses.49 **This building-block zoning is consistent with efforts** at both the federal level and in some states **to connect Marine Protected Areas** (MPAs) **in a more comprehensive area-based ocean management system.** USCOP also recognized the importance of regional coordination, suggesting voluntary engagement that leaves existing authorities intact, with the federal government encouraging broad participation and providing technical assistance.9 ' **By using a multistate, multijurisdictional approach, the particular state's interests are subsumed in a regional decision-making body and the federal government helps to coordinate and facilitate, working outside of the dueling sovereigns framework in more of a mediator role**.49' **Regional coordination is also gaining traction in legislative proposals**. House Report 2 1, the Oceans Conservation, Education, and National Strategy for the 21st Century Act, proposes increased regional governance mechanisms facilitated by "regional ocean partnerships." 2 This proposal divides the country into nine regions, with the potential for subregions.9 Membership in these partnerships would include federal officials, state and tribal officials, the executive director of the applicable Regional Fisheries Management Council (considered a nonfederal representative), and a local government representative, among others.94

Solvency: Foreign Policy

States empirically able to act with other countries

Washburn Law Journal, 9 ("The Rule of Law and The Global War on Terrorism: Detainees, Interrogation, and Military Commissions Symposium: Note: Federal Framework for Regulating the Growing International Presence of the Several States". Lexis) // GD
Under the Medellin framework, questions remain as to the federal government's authority to preempt state action that reaches out into foreign affairs, including the federal government's ability to "mandate a state's compliance with an international obligation of the federal government." n24 The question becomes increasingly timely as the several **states continue to reach out globally, forming compacts with other nations as well as adopting and implementing international treaties domestically, regardless of federal ratification**. n25 The current federal foreign affairs doctrine that governs state international activity is unequipped to address situations in which states fail to comply with the international obligations of the federal government. n26 However, the foreign affairs doctrine remains applicable to [*428] situations in which the states reach out impermissibly and interfere with existing federal obligations so long as there is a strong and precise federal interest at stake. n27

States can engage in international initiatives to change conditions within foreign countries

Halberstam 1, Law @ Michigan 46 Vill. L. Rev. 1015 // GD
State and local activities in the foreign affairs arena, while not a new phenomenon, 64 have expanded over the past thirty years. As the sphere of international activity has grown beyond issues of security and state recognition to reach many economic, social, cultural, and environmental issues previously regulated at the national or subnational level of government, subnational governments within federal systems worldwide have taken an increased interest in the conduct of foreign affairs. 65 The [*1028] States within the U.S. federal system are no exception. 66 **States have** vigorously promoted trade and investment opportunities, and also **engaged in international initiatives for** more "political" purposes, **such as effecting change in conditions or policies within foreign nations.** 67 Although many of these activities, taken individually, may be considered marginal or even obscure, **taken together they amount to a pervasive subnational force in the conduct of the Nation's foreign affairs.**

State actions solve relations ---they are perceived as agents of the U.S.

Blasé 3, Phd-Government-UT Austin
http://www.lib.utexas.edu/etd/d/2003/blasejm039/blasejm039.pdf // GD
Although **what the states** and cities **are doing may not rise to the level of federal law, many** of these policy **initiatives are in harmony with domestic policy goals.** Collectively, it can be argued **, they serve to shape the foreign relations of the nation as a whole.** Ivo **Duchacek sees no difference in**

relations conducted by federal actors and by subnational actors. "If by diplomatic negotiation we mean processes by which governments relate their conflicting interest to the common ones, **there is,** conceptually, **no real difference between the goals of paradiplomacy and traditional diplomacy: the aim is to negotiate and implement an agreement based on conditional mutuality."**45 Brian **Hocking objects to treating the foreign relations of subnational governments as if they were something distinct from the federal level**. Hocking studies what happens in federal systems when foreign policy issues become local concerns. He sets his approach apart from the complex interdependence crowd, such as Duchacek, saying that ideas such as "paradiplomacy" places subnational activities outside of traditional diplomatic patterns. **Hocking sees non-central governments as integrated into a dense web of diplomatic interactions, in which they serve more as "allies and agents"** in pursuit of national objectives rather than as flies in the ointment. "The nature of **contemporary public policy with its dual domestic-international features, creates** a mutual **dependency between the levels of government and an interest in devising cooperative mechanisms and strategies to promote the interests of each level**."46 Rather than separating the activities of non-central governments from those of central governments, **Hocking's goal is to "locate" subnational governments in the traditional diplomatic and foreign policy processes initiated and carried through by the federal government.**

Solvency: Uniformity

States can work in a uniform fashion – NCCUSL proves

NAATbatt. March 3, 2012. National Alliance for Advanced Technology Batteries. NAATBatt's core missions are to grow the North American market for products incorporating advanced energy storage technology and to reduce the cost of those products to U.S. consumers. The two missions are intimately related. NAATBatt believes that the high cost of electrochemical energy storage, compared to competing technologies, is the principal barrier to widespread adoption of large format advanced battery technology. NAATBatt supports the adoption of public policies and the development of new technologies and industrial standards that will reduce the price to consumers of large format advanced batteries and the products that use them. "Efforts to Promote Energy Storage Should Look to the States". http://naatbatt.org/naatbatt-blog/efforts-to-promote-energy-storage-should-look-to-the-states // GD

This past week U.S. Reps. Chris **Gibson** (R-NY) **and** Mike **Thompson** (D-CA) **introduced legislation that would create an investment tax credit (ITC) for energy storage technologies of all types**. Their bill, the Storage Technology for Renewable and Green Energy Act (STORAGE) Act (H.R. 4096), is the House companion legislation to S. 1845, introduced by Sens. Ron Wyden (D-OR), Jeff Bingaman (D-NM), and Susan Collins (R-ME). **The STORAGE Act is helpful in highlighting the need for government support of energy storage technology.** That support is needed if energy storage is to move from being a theoretical resource to being a useful and cost-effective tool on the grid. Congress should take note of the production tax credit's (PTC) great success in transforming wind energy over the last two decades from an esoteric and uneconomic source of electricity into a significant contributor of power to the grid and the lowest cost option for new electricity generation in many areas. That same success can undoubtedly be duplicated in the area of energy storage. Unfortunately, because of the political impasse in Washington, the STORAGE Act is unlikely to be called for a vote, let alone to be enacted, any time before the general elections next November. That impasse, however, should be a call to action, not resignation. **Many of the barriers to deploying distributed energy storage arise, not from a lack of federal policy, but from inconsistent and antiquated state regulations that restrict how storage and other assets located on the distribution portion of the grid can be owned and used. While local regulation of purely local electricity service makes sense, as technology increasingly permits assets located on local distribution systems to impact the larger, national electricity grid, the inconsistencies and antiquated nature of many local regulatory schemes becomes an increasingly critical issue.** The storage industry should spend this period of impasse in Washington addressing that issue. **One possible model for modernizing and making more uniform state regulations** which inhibit the deployment of energy storage and smart grid technology **is the National Conference of Commissioners on Uniform State Laws (NCCUSL**). In the late 19th Century, it became apparent that wide variations in laws between separate states created confusion and inhibited commerce. The solution was the creation of the National Conference of Commissioners on Uniform State Laws (NCCUSL). **The NCCUSL consists of commissioners appointed by each state. It drafts model legislation, or uniform acts, which individual states can choose to adopt, and often do.** The best known of these model acts is **the Uniform Commercial Code, which has been adopted by all 50 states with only minor variations.** A national conference of utility regulatory law experts tasked with making state utility regulations more uniform in order to accelerate the deployment of energy storage and smart grid technologies on a national basis would be a worthwhile effort. The FERC and the U.S. Department of Energy would do well to seed such a project with funds and counsel. As Rahm Emanuel once remarked, you never want a serious crisis to go to waste. We should use the crisis of the impasse in Washington to advance the cause of energy storage technology where we can. That place, for the moment, is in the states.

Uniformity is real world

Greenberger 12
(James, Executive Director of the National Alliance for Advanced Technology Batteries, "Efforts to Promote Energy Storage Should Look to the States", March 2, http://naatbatt.org/naatbatt-blog/efforts-to-promote-energy-storage-should-look-to-the-states/)

Many of the barriers to deploying distributed energy storage **arise**, not from a lack of federal policy, but **from inconsistent** and antiquated **state regulations** that restrict how storage and other assets located on the distribution portion of the grid can be owned and used. While local regulation of purely local electricity service makes sense, as technology increasingly permits assets located on local distribution systems to impact the larger, national electricity grid, the inconsistencies and antiquated nature of many local regulatory schemes becomes an increasingly critical issue. The storage industry should spend this period of impasse in Washington addressing that issue.¶ **One possible model for** modernizing and **making more uniform state regulations** which inhibit the deployment of energy storage and smart grid **technology is the** National Conference of Commissioners on Uniform State Laws (**NCCUSL**). In the late 19th Century, it became apparent that wide variations in laws between separate states created confusion and inhibited commerce. The solution was the creation of the National Conference of Commissioners on Uniform State Laws (NCCUSL).¶ **The NCCUSL consists of commissioners appointed by each state. It drafts model legislation, or uniform acts, which individual states can choose to adopt, and often do**. The best known of these model acts is **the Uniform Commercial Code**, which **has been adopted by all 50 states** with only minor variations.

States can overcome fragmentation

Miller 2009 (John, Virginia Transportation Research Council Office of Intermodal Planning and Investment, Virginia's Long-Range Multimodal Transportation Plan 2007-2035 INSTITUTIONAL CHANGES IN TRANSPORTATION DECISION MAKING, http://www.virginiadot.org/projects/vtransNew/resources/VTrans2035_Decisionmaking_FINAL.pdf AS)

As a way to mitigate the risks of devolution, Giuliano (2007) **offers the history of California's** public-private 20 mile Alameda Corridor rail line which successfully brought eight cities, three railroad companies, two ports, and two regional agencies into sufficient agreement to construct the $2.4 billion project. **The existence of fragmented power threatened to prevent construction because each entity wielded the ability to stop the project:** for example, a city could have refused to allow construction without compensation for adverse impacts (e.g., higher rail volumes and construction noise) or the railroad companies could have refused to sell rights of way necessary for construction**. However, the project was ultimately built, with the authority providing mitigation funds to the cities in return for their expedited permits for construction**. Giuliano (2007) argues that **to achieve this large scale project within a devolved environment and without increasing costs** substantially, **several conditions were essential**, four of which are: 1**. Experienced personnel** who had the technical and organizational skills necessary to move this complex project forward. **2. An authority** (which represented the major players, such as the two ports and the largest cities) **with sufficient funding and political power** to "buy out" the smaller cities that could otherwise have hindered the project. 3**. Clear incentives and disincentives for cooperation,** such as the threat of economic harm for the region if the project failed and mitigation funds for the cities. Incentives accrue to multiple parties such as the cities (which benefit from the reduced delays and emissions due to elimination of at-grade rail crossings [Judge, 2002] and the railroads (which benefit from added rail capacity [Alameda Corridor Transportation Authority, 2009). 4**. An understanding of the project's regional benefits and an ability to communicate this importance to all stakeholders.**

Solvency: Overlaps

States solve best for overlaps in Federal and State governments – especially when it comes to the environment

Rachael E. **Salcido**. **2008**. Offshore Federalism and Ocean Industrialization. 82 Tul. L. Rev. 1355 (2007-2008) Offshore Federalism and Ocean Industrialization. Professor of Law Director, Sustainable Development Institute Director, Environmental Law Concentration B.A., J.D., University of California, Davis Professor Rachael Salcido is a scholar of environmental and natural resources law, with particular expertise in ocean and coastal law and ecosystem restoration. Her articles have appeared in prominent law journals and she is an active member of the Rocky Mountain Mineral Law Foundation. GD

For instance, in California and Florida, the interest in strong local economies and coastal environmental quality could prevent the type of oil exploration and development being pressed by the federal government, but in the Gulf of Mexico, where a deepwater-drilling boom has been occurring, additional oil drilling might be promoted. Reality suggests that at the very least, any "race-to-the-bottom" would be far from universal. The most likely result is that local 2008] 1421 TULANE LA WREVIEW concerns will continue to influence significantly (if not dictate) development decisions, as they have in the past, and a widespread decline in coastal environmental quality is unlikely to be tolerated. As Professor Richard B. Stewart pointed out in a seminal article on the rationales for and against decentralization: As a nation, we have traditionally favored noncentralized decisions regarding the use and development of the physical environment. This presumption serves utilitarian values because **decisionmaking by state and local governments can better reflect geographical variations in preferences for collective goods like environmental quality and similar variations in the costs of providing such goods**.434 **States must already regulate land-based pollution, a serious threat to marine environments that is predicted to grow concomitantly as coastal populations grow. 435 Addressing land-based pollution requires careful land-use planning along the coasts, currently facilitated by the CZMA and state policies**.436 **States are taking the lead role in some areas of environmental policy** (including vehicle emissions and greenhouse gas restrictions) based on the lack of leadership on these issues at the national level, and the coastal states in the West--California, Washington, and Oregon-have been recognized by the federal government for making significant progress in conservation and management of coastal areas.437 Furthermore, offshore development implicates the development of coastal community economies and impacts on valuable marine resources, which are part and parcel of coastal state identities. Often, **people living in coastal areas have an affinity to the natural environment and have developed cultural traditions connected to ocean and coastal resources**. The collapse of 1422 [Vol. 82:1355 OFFSHORE FEDERALISM commercial fisheries in the United States and other countries has illustrated the importance of fishing to entire coastal communities, and examination of the economic shift that must occur when fisheries collapse reflects more than just preferences for particular occupations, rather than connection to and sense of place that is impossible to abandon." ° Lastly, **another rationale for state involvement in ocean and coastal developments is the long-overdue reflection in our marine laws that all parts of ocean ecosystems are connected**.'" This fact and the prior arguments weigh heavily against eliminating consistency as part of the management regime and including states more broadly inz'4 decision making regardless of the physical distance of offshore projects to the coast. **The CZMA's history and current regulations support this approach.** In Secretary of the Interior v California, California argued that the Secretary of Interior's decision to suspend offshore-drilling leases was subject to the CZMA consistency provisions."2 The language in the CZMA at the time required consistency determinations on projects that "directly affect[ed]" the coastal zone."3 When the Supreme Court determined that the lease suspensions in question did not "directly affect" the coastal zone because the leases were not in the coastal zone, Congress in turn amended the statute by removing "directly.'" This amendment compels consistency reviews for projects at a greater distance from the coastline or defined "coastal zone" than might otherwise have been captured with the prior "directly affect" provision." Furthermore, federal regulations now approach the "effects test" by asking whether the activities or project in question have a foreseeable effect on any coastal areas is reflected in the USCOP Report, Pew Report and the national MPA framework. 2008] 1423 TULANE LA W RE VIE W coastal resource or use."6 **This progression in the law reflects support for both a state and federal role in offshore management.** Altogether, **the arguments for increased federal supremacy** and increased state supremacy **have much less to offer than the compromise that has been forged through the CZMA consistency provisions.**

CP = Follow On USFG

FoPo → Follow-On

No solvency deficit – the federal government will model state action

Halberstam '1
[Dan. Prof Law – Michigan. "The Foreign Affairs of Federal Systems: A National Perspective on the Benefits of State Participation" The Villanova Law Review, 2001 ln)
[131]The pervasive influence that these various actions have on the Nation's foreign affairs, however, cannot be cast only in terms of the potential harm that they inflict. Instead, **these initiatives also may have a positive** [*1040] **impact on the national foreign policy making process**. Perhaps ironically, **this positive impact is more apparent where state and local officials direct their actions specifically toward the conduct of the Nation's foreign affairs. By challenging the absence of federal foreign policy on an issue, state and local actors may raise national awareness of an issue, place issues on the agenda of federal officials or even induce the federal government to take action on behalf of the Nation**.

Envt → Follow-On

State actions spills up to federal modeling- environmental polices prove

Northrop and Sasson 08
(Michael and David, Michael Northrop is Program Director for Sustainable Development at the Rockefeller Brothers Fund. David Sassoon runs SolveClimate.com, a Web site dedicated to debating and advancing solutions to global warming, 6/3, "States Take the Lead on Climate With the Bush Administration and Congress failing to act, many states are devising sweeping climate and energy policies that could be a blueprint for a future national climate policy", http://e360.yale.edu/feature/states_take_the_lead_on_climate/2015/)
The federal government in the Bush era **has done little to tackle our most pressing environmental problem — climate change**. **Yet there is one bright side amid Washington's inaction: Many states have been stepping into the void and adopting comprehensive climate change policies that can be a model for the coming federal legislation to slow global warming. The leadership of states** such as California, Arizona, Connecticut, New Jersey, and Florida **is crucial not only because it provides a template for federal climate legislation that will no doubt be adopted under the next presidential administration. State action is also vital because among the top 75 emitters of greenhouse gases worldwide, half are U.S. states.** Individually, **the size of many of these state economies rivals those of most countries**. **State climate policy initiatives** — though not yet implemented on a national scale — **are collectively among the most advanced anywhere in the world. They provide a profound but largely unrecognized platform for national action, and for a potential reassertion of global environmental leadership by the United States.** Indeed, **state climate initiatives have provided hope to those in the global community who have waited patiently for the United States to engage meaningfully in international climate efforts.** The decisive action of many states — 27 currently have or are developing comprehensive climate action plans — is taking on added importance for another reason: **Innovative state climate and energy policies are showing skeptics in this country a**nd in Congress that, **rather than being a burden, ground-breaking energy conservation and renewable energy programs can create economic opportunit**y. **Many of the more than 300 climate policies and mechanisms devised by various states will provide new business opportunities, as all sectors of society — housing, industry, commerce, energy, agriculture, forestry, transportation, waste management — adopt greater energy efficiencies and move to alternative sources of energy.** Against the backdrop of inaction by the Bush administration and Congress, **the states have moved farther and more rapidly than most people realize.** Indeed, this September, ten mid-Atlantic and Northeastern **states will begin implementing a cornerstone of effective national or global climate policy**: A so-called "cap-and-trade" system under which emitters of greenhouse gases — in this case, power plants — must begin steadily reducing carbon emissions and can sell a portion of their emissions allotment once they begin implementing efficiencies. Power plants that fail to meet their emissions targets could buy allotments from more efficient utilities. As heartening as such moves are, the fact remains that the United States still needs a comprehensive national climate policy that will set national carbon reduction targets, put a national price on greenhouse gas emissions — either through a cap-and-trade system or a tax — and eliminate uneven standards among states. Proof that some federal action is needed can be seen in Texas, which is currently the sixth largest emitter of greenhouse gases worldwide, yet has not adopted a climate policy to reduce those emissions. Make no mistake, climate legislation is coming, though almost certainly not until a new presidential administration takes office. Climate change will be the subject of loud political debate on Capitol Hill this summer when the Senate considers America's Climate Security Act — also known as Lieberman-Warner. But this will only be a dress rehearsal; few are under any illusion that final climate law will emerge from this initial exercise. In less than a year, however, this situation could easily be reversed. The new president will likely be a game-changing force, as all three top presidential contenders have committed themselves to tackling global warming. Also decisive might be the new movement of US governors who are publicly demanding a state-federal partnership to proactively address climate and energy issues. These demands were aired last month when 18 states signed such a declaration, issued at the Governors' Conference on Climate Change at Yale University. **The states' record of fostering groundbreaking environmental policies that**

ultimately evolve into national law is well established. State innovation was, for example, at the heart of the battle against acid rain. **State laws served as models** for the federal Clean Air Act, Clean Water Act, and legislation creating Superfund sites. In addition to the cap-and-trade program that will be launched in September by the ten Eastern states in the Regional Greenhouse Gas Initiative (RGGI), two other regional groupings of states are working to establish carbon trading — the Western Climate Initiative and the Midwestern Governors Association. They have rolled up their sleeves, convened key stakeholders, and are hammering out the actual details of how to establish and implement an effective cap-and-trade mechanism. This is wisdom that would go a long way in Washington as lawmakers debate Lieberman-Warner, which would create a national cap-and-trade program. One important element of the debate on Capitol Hill concerns the formula for allocating or auctioning carbon credits, and a number of states have developed valuable expertise on this issue. A RGGI expert working group, for instance, conducted an in-depth analysis on the subject, and many states have already made the crucial choice to auction 100% of carbon credits under RGGI trading. Under this system, northeastern utilities would purchase credits, or allowances, permitting them to emit CO2 at current levels, with requirements for steady reductions. As the utilities lower CO2 emissions, they can sell the credits to utilities that have made slower cutbacks. The RGGI auction proceeds would be used to help vulnerable citizens defray higher energy costs, to support energy efficiency programs, and to invest in renewable energy projects — all preferable to offering free emission allocations to major polluters. As it now stands, Lieberman-Warner calls for doling out a significant percentage of free emissions permits to major emitters of greenhouse gases. But **the states have far more to offer. They also have approved a host of energy-efficiency measures affecting all sectors of the economy.** For example, one set of policies provides both emissions reductions and substantial economic savings from the building sector through improved building codes, insulation and weatherization programs, and lighting retrofits. From the waste management sector, waste reduction and recycling programs yield similar two-pronged benefits.

AT: Aff Args

AT: Perm Do Both

States solve best alone – federal involvement is worse

Green 12

[Mark Green has been working 16 years as national editorial writer in the Washington Bureau of The Oklahoman newspaper. In all, he has been a reporter and editor for more than 30 years, including six years as sports editor at The Washington Times. "Turning Aside the 'Regulatory Flood'" 11/26/12 http://energytomorrow.org/blog/turning-aside-the-regulatory-flood/#/type/all] JAKE LEE

No, when you have the winning Powerball ticket, you redeem it. To do so **we need** sensible, **efficient regulation** and regulatory systems, **led by experienced** and competent **state-level regulators**. **We don't need federal regulatory layers that** merely **duplicate what the states already are doing, with professionalism and efficiency**. ¶ Likewise, we need a fair tax system that doesn't single out an industry or a handful of companies. Rather, we need one that encourages investment and development while **assuring that U.S. energy firms can go up against global competitors.** ¶ **This is the path to more domestic oil and natural gas** – the president's goal – and the desire of the American people.

Perm fails—federal action prevents states action—hurts innovation of plan

Shobe and Burtraw '12. [William M. Shobe, Director, Center for Economic and Policy Studies Weldon Cooper Center for Public Service Professor of Public Policy, Frank Batten School of Leadership and Public Policy, Dallas Burtraw, PhD in Economics from University of Michigan, Senior Fellow at Resources for the Future, "Rethinking Environmental Federalism in a Warming World," http://www.rff.org/rff/Documents/RFF-DP-12-04.pdf] JAKE LEE

A third view is historical. Our scientific understanding of climate change is rapidly ¶ unfolding, and a social consensus on how to respond is far from mature. This is analogous to ¶ early periods in other historical social movements. **When the national government acts, and when ¶ it preempts state and local governments from acting**, **it removes** from the bubbling policy caldron ¶ **the development of ideas that work their way through subnational political decisionmaking.**24 In ¶ other words, subnational activity is not just about innovation in policy design, but also about the ¶ **development of a national consensus**. The political process at the subnational level may be very important to that process as climate science continues to develop. **The history of RGGI clearly ¶ indicates that the organization of the regional program was at least partly intended to act as a ¶ spur to national climate legislation. So, state and local actions to address climate change may ¶ have as part of their local justification the purpose** of signaling a willingness to **cooperate in the ¶ formation of a national climate policy. Preempting local actions would interfere with this ¶ signaling.**

AT: Perm Do the CP

This is a voting issue

They sever our of federal action
WEBSTER'S 76 NEW INTERNATIONAL DICTIONARY UNABRIDGED**,** p. 833.
Federal government. Of or relating to the central government of a nation, having the character of a federation **as distinguished from the governments of the constituent unites (as states** or provinces).

AT: Links to Politics/Elections

1. State action wouldn't link to politics – Obama doesn't have to take a stance or push for the CP – no political capital is necessary. He won't get blame or take credit – only the state act.

2. No link – States politics is less contentious

Rabe 4
(Barry, Brookings Nonresident Senior Fellow, Governance Studies, "Statehouse and Greenhouse," Brookings Institution Press. Washington, DC. Pg 27, http://www.brookings.edu/~/media/press/books/2004/2/statehouseandgreenhouse/statehouseandgreenhouse_chapter)

But this is not what occurred **in the states** examined in this study. Instead, **a much quieter process of policy formation has emerged, even during more recent years, when the pace of innovation has accelerated** and the intent of many policies has been more far-reaching. This is not to suggest that climate-related episodes have been irrelevant or that leading environmental groups have played no role in state policy development. **Contrary to the kinds of political brawls so common in debates about climate change policy at national and international venues, however, state-based policymaking has been far less visible and contentious, often cutting across traditional partisan and interest group fissures. It has, moreover, been far more productive in terms of generating actual policies with the potential to reduce greenhouse gas releases.**

3. Bureaucracy undermines clash at the state level

Rabe 4
(Barry, Brookings Nonresident Senior Fellow, Governance Studies, "Statehouse and Greenhouse," Brookings Institution Press. Washington, DC. Pg 27, http://www.brookings.edu/~/media/press/books/2004/2/statehouseandgreenhouse/statehouseandgreenhouse_chapter)

Second, **state-level policymaking is often quite different from what occurs in Washington**. As at the federal level, state governments can bog down in partisan squabbles and succumb to the powers of influential interest groups. But **in many states, policymaking is far more informal**, and entrepreneurial opportunities may be considerably greater, than in Washington. In the absence of particularly strong opposition from interest groups, entrepreneurs may have a much better opportunity to establish and sustain supportive networks. These may involve other agencies, interest groups, or allied elcted officials and may have been established over an extended period, over a decade in some of the state climate change cases. Consequently, many state capitals may offer particularly promising entrepreneurshi**. The mezzo level in many state agencies, such as environmental protection and energy, is much less densely staffed than in their federal counerparts, and the layers between an agency and the governor's office are likely to be much thinner. This allows and individual to emerge as the trusted resident expert on a particular topic, such as climate change, able to get important messages to prominent places in the state governance structure** p opportunities, particularly for relatively "new" issues for which and infrastructure of established policies and interest group positions has not been created.

4. Political Cover

Rabe 7
(Prof of Public Policy-Ford School at Michigan, "Beyond Kyoto: Climate Change Policy in Multilevel Governance Systems," Governance, Vol. 20, Issue 3, July)

Those more active states include many that have conventionally been among the most innovative in environmental and energy policy, particularly those lodged along the respective national coasts, but they increasingly include a diverse set from other regions such as the Southwest and Midwest (Rabe 2006). **Most of the initiatives have been enacted with minimalpartisan rancor and have not been dominated by a single political party. Most of these also appear quite capable of enduring once partisan control of a state government,** including the governorship, **changes hands, and have not proven very controversial to enact or implement**. Clearly, state agencies have played a central role in policy development, building coalitions rather quietly around policies that are tailored around relatively inexpensive reduction opportunities. This is entirely consistent with a pattern of "bureaucratic autonomy" and agency-based entrepreneurship that has been established in other American policy contexts (Carpenter 2001; Mintrom 2002). These steps have often been linked to early signs of climate change as manifest in a particular state, thereby framed as a response to a specific environmental problem facing the state**. A further source of bipartisan appeal for these initiatives has been the promise of multiple benefits,** whereby agency advocates demonstrate the potential of a program not only to reduce greenhouse gases but also to achieve other goals, such as reduction of conventional air pollutants, reduced reliance on imported fossil fuels, and longer term regulatory predictability to electrical utilities and other regulated entities, as well as economic development opportunities (Rabe 2004). Hence, **a considerable part of the appeal of state-based climate policy initiatives has been the simultaneous pursuit of environmental protection and potential contribution to economic growth or stability**. Indeed, much of this comports with Eugene Bardach's definition of smart practice: "What makes a practice smart is that the method also involves taking advantage of some latent opportunity for creating value on the cheap" (Bardach 1998, 36). In contrast, climate policy initiatives, whether or not they meet the definition of smart practices, are simply much harder to find at the Canadian provincial level. Only one of the 10 provinces, Manitoba, begins to approach the 15 most active American states in terms of the breadth and rigor of its greenhouse gas reduction strategy. Instead, most provinces remain focused on preliminary study of the issue and consideration of alternative policies that might be established at some future point. Among the three or four more active provinces, climate policy is almost exclusively confined to nonbinding "goals" and voluntary efforts. Any regulatory provisions, or exact rules to guide reduction, are focused narrowly on provincially funded activity, such as a mandate in Alberta to purchase a set of hybrid vehicles for government use. Fifteen years after Rio and nearly a decade after the signing of Kyoto, it remains very difficult to discern much of a pulse on serious climate policy development in most provinces, quite contrary to the experience of a growing and diverse set of American states. American state engagement on climate policy may be every bit as surprising as Canadian provincial disengagement. Given conventional depictions of the United States as a North American climate policy laggard and Canada as a devoted adherent to Kyoto, why are so many—and such diverse—states apparently taking the lead in devising policies to reduce greenhouse gases? Why do the American states offer an increasingly large and robust set of policy initiatives where there is no evidence of a comparable trend in Canada? Subsequent discussion will explore three distinct factors that emerged through the comparative case analysis to explain this variability. Differing Intergovernmental Context The divergent paths of the respective federal governments on Kyoto served to create very distinct contexts for states and provinces to consider their own policy development options. These differing contexts were clearly unintended by-products of the very different ways in which the debate over Kyoto, involving both those steps leading toward final

negotiations and consideration of possible ratification, played out in Washington and Ottawa. In turn, they illustrate the very differing roles that subnational units—states and provinces—played in these processes, with attendant impacts on their own involvement in climate policy development. **A hallmark of the American federal government**through the two Clinton administrations and the second Bush presidency **has beena consistent inability to reach agreement on legislation related to** environmental protection, **energy,** and other areas vitally important to climate change. During this period, **every possible partisan configuration within the American two-party system has existed for at least some period of time and yet a consistent outcome has been lack of domestic policy consensus,** even in terms of needed updating of established legislation such as air quality (Binder 2003). This divide is equally evident in the international climate realm, as the Clinton administration agreed to Kyoto in December 1997 even though a number of its key provisions directly contradicted a Senate resolution that passed by a 95–0 vote six months earlier. A few states sent representatives to Kyoto and earlier rounds of negotiation but they were not formally consulted either in developing the treaty or in examining ways in which the Senate might be persuaded to ratify it. Instead, Kyoto was widely recognized through the remaining three years of the Clinton administration as doomed politically, so much so that the administration never submitted it to the Senate for ratification nor actively developed a strategy seeking ratification. In many respects, the 2001 actions by the Bush administration were anticlimactic and neither the 2000 nor 2004 Democratic presidential nominees offered any blueprint for jump-starting Kyoto. In many respects, Kyoto was politically "dead on arrival" but nonetheless attracted tremendous division and controversy in Washington during subsequent years. As states were essentially excluded from this process, they had a relatively quiet decade in which to think about climate change, in terms of both how it might affect them in distinct ways and how they might fashion their own policies to reduce greenhouse gases and simultaneously promote economic development. In some instances, states have clearly responded to a perception that climate change poses serious threats to their residents—such as sea-level rise in coastal states and severe droughts in agricultural states—and that there is a significant environmental need to craft responsive policies as soon as possible. But these responses have also been coupled with efforts to design policy that "fits" the economic and political realities of a particular state. These are intended to minimize any economic disruptions that might occur during implementation and to take maximum advantage of economic development opportunities that may stem from early action on climate change. What has been missing in these state policy processes is the kind of anguished, often moralistic, rhetoric that has polarized national debate and made any semblance of consensus at that level so elusive. Instead, **state policy deliberations over climate** change **have benefited from a** kind of **"political cover" provided by the widely held presumption that states lacked the incentives**, resources, or authority necessary **to play any serious role**. Many states used this extended period to reflect seriously about the issue of climate change and how they might begin to respond to it. Many began with symbolic initiatives and analytical exercises, gradually moving toward **policy** development as ideas converged and opportunities arose. At various points, these **efforts**took institutional form, such as creation of a cross-agency task force or designation of a unit with a lead role in policy development. All of this **continued apace, receiving surprisingly little attention from** environmental groups, **the media, or federal policymakers**, while the latter continued to dominate public attention by thrashing over the details of Kyoto and its aftermath. This served to give state officials considerable time to contemplate climate policy options, including the forging of policies that made considerable political, economic, and

environmental sense for them to pursue unilaterally, with the reasonable expectation that no federal action of any consequence was in the offing.

AT: Race to Bottom

The race to the bottom theory is empirically disproven- states race to the top

Adler '5
(Jonathan H Adler, Associate Professor of Law and Associate Director of the Center for Business Law and Regulation, Case Western Reserve University School of Law, "Jurisdictional Mismatch in Environmental Federalism" (July 2005). Case Research Paper Series in Legal Studies 05-18 Available at SSRN: http://ssrn.com/abstract=770305)
One immediate problem with the race to the bottom theory is its static view of the tradeoff between economic development and environmental protection. Insofar as it is possible to reduce the costs of environmental regulation without sacrificing existing levels of environmental protection**, government efforts to create a more business-friendly regulatory climate need not produce suboptimal levels of environmental protection. At the same time, business interests often have their own reasons for supporting greater levels of environmental protection, including the effect of environmental conditions on labor supply. States are not only competing for industry, but for workers and taxpayers as well. Moreover, as incomes rise, so does the demand for environmental protection, so states that fail to maintain high levels of environmental protection risk driving away residents to other states**. Additional problems with the race-to-the-bottom theory have been identified by Professor Richard Revesz. First, there is no reason to assume that interjurisdictional competition in environmental policy is any less likely to produce optimal results or otherwise less reliable, than in other contexts. While it is plausible that interjurisdctional competition could produce suboptimal results due to game theoretic interactions, there is no a priori reason to assume that the result would be state standards that are suboptimally lax, rather than suboptimally stringent. Assuming that there is a race to the "bottom," and state standards are insufficiently stringent, federal regulation might not solve the problem. Environmental regulation is not the only, or even the most common, context in which states compete for business investment. If a federal standard prevents competition in environmental standards, states will compete in other areas. Indeed, if the race-to-the-bottom argument can justify federal environmental standards, it could justify the federalization of just about everything. Another problem with the race to the bottom theory, as noted by economist William Fischel, is the dominant role of homeowners in local politics, which can often produce a "Not in My Back Yard" (NIMBY) reaction to proposed changes in land use. Homeowners tend to be very risk averse about local changes or developments that have the potential to depress land values, and this risk aversion "pervades all local political decisions." **Even those homeowners who are not particularly concerned about the environmental effects of proposed developments or industrial activities are likely to recognize that prospective buyers might**. As a result, Fischel goes so far as to argue that **local governments are "the least likely candidates for a 'race to the bottom' of the environmental ladder" and that "local governments are, if anything, inclined to accept too little garden-variety industry" and other environmentally harmful land-uses**. Theory aside, **empirical evidence of a race to the bottom in environmental policy is conspicuously lacking.** While there are some studies finding that the stringency of environmental regulation can affect industry siting decisions, and survey data indicating that such effects may influence state-level environmental policy decisions, the available empirical evidence cannot sustain the claim that interjurisdictional competition produces suboptimally lax environmental regulation. **The fact that many states adopted federal regulation in advance of the federal government, and that in some cases those states with the most to lose from regulation were the first to act, would strongly suggest otherwise**. Further evidence suggests that, at least in some environmental contexts, **any "race" among jurisdictions is "to the top," as states seem more likely to increase their environmental efforts in response to neighboring jurisdictions' actions than to relax regulation**. In short, despite its prominence in environmental policy discussions, the "race-to-the-bottom" theory is not a particularly strong basis upon which to rest the case for federal intervention.

Federalism D.A.

Top Shelf

FYIs

Offshore Federalism based off of jurisdictional issues in the ocean
Rachael E. **Salcido**. **2008**. Offshore Federalism and Ocean Industrialization. 82 Tul. L. Rev. 1355 (2007-2008) Offshore Federalism and Ocean Industrialization. GD
A significant distinction between environmental federalism and offshore federalism must be considered from the outset. First, in examining environmental federalism, the environmental ills to be regulated are often (though not always) unrelated to lands owned by the federal government.'05 **The history of offshore federalism**, however, **is based on an initial dispute over ownership of offshore areas**.' 6 **Conflicts between the state and federal government occur most frequently with development that is proposed for areas under federal jurisdiction-as is the case with much offshore oil drilling and, today, with the development of open-ocean aquaculture and wind farms.**' 7 When one discusses development on the OCS, a significant distinction can be made from other federalism disputes in that the federal government is managing areas completely outside the boundaries of any of the states.'0 This makes the OCSLA-CZMA framework and the "cooperative federalism" approach to coastal and ocean management all the more unique when discerning appropriate structures for local, state, and federal regulation of coastal and ocean development because distinctive incentives and regulatory propensities can be identified."9

1NC Oceans Shell

A. Uniqueness – Ocean Policy is disjointed and devolved to the states – Increasing FEDERAL Ocean control would gut federalism and cause backlash

Welikson 12
(Laura, "First U.S. National Ocean Policy Established – Congress Just Needs to Support It," pg online @ http://gwujeel.wordpress.com/2012/11/13/first-u-s-national-ocean-policy-established-congress-just-needs-to-support-it/ //ghs-ef)

For reasons that have **to do with federalism** principles **and a historically piecemeal approach to ocean management, no regulatory entity oversees U.S. ocean waters as a whole**.[4] **Coastal states exercise exclusive control over the first three miles of coastal waters**, and the federal government has sovereignty over the expansive Exclusive Economic Zone, which extends two hundred miles offshore.[5] **Overall management of ocean and coastal waters is divided among numerous federal, state, and local agencies, operating under different, overlapping,** and sometimes conflicting **regulatory regimes and objectives**.[6] As a result**, each activity or threat to ocean health is typically considered in isolation**; **the coordinated management** of cumulative impacts **is rare and difficult to achieve**.[7] The National Ocean Policy is the first federal ocean program to espouse principles of ecosystem-based management ("EBM"). EBM is an integrated approach to managing ocean resources that considers the entire ecosystem and the cumulative impacts of human activities and environmental changes.[8] This holistic approach is crucial to preserving our failing ocean ecosystems. To implement EBM, the National Policy calls for the creation of Regional Planning Bodies to engage in comprehensive coastal and marine spatial planning of the Large Marine Ecosystems bordering U.S. coasts.[9] Coastal and Marine Spatial Plans will take into account ecosystem-wide effects, identify vulnerable areas, prioritize ocean uses, and designate regions for suitable uses and activities.[10] The National Ocean Policy has been controversial among some congressional and industry circles because it seems to expand federal authority over a historically state-dominated field and threatens to saddle commercial development with more environmental priorities and protection.[11] **More recently, states and regional partnerships have taken initiatives to implement the National Ocean Policy, but ocean programs are still underfunded by Congress**.[12] William Ruckelshaus, co-chairman of the Joint Ocean Commission Initiative, said in a statement, "We cannot let partisan politics threaten our ability to adequately manage ocean resources to improve ocean health and support numerous businesses and jobs around the country."[13]

B. Federalism is key to solve civil war

Calabresi '95
(Steven, Associate Professor, Northwestern University School of Law, December, "Symposium: Reflections On United States V. Lopez: "A Government Of Limited And Enumerated Powers": In Defense Of United States V. Lopez," 94 Mich. L. Rev. 752, pg lexis//um-ef)

Small state **federalism is a big part of what keeps the peace in countries like the United States** and Switzerland. **It is a big part of the reason why we do not have a Bosnia or a Northern Ireland or a Basque country or a Chechnya or a Corsica or a Quebec problem.** n51 **American federalism** in the end **is not** a trivial matter or a quaint historical anachronism. **American-style federalism is a thriving and vital institutional arrangement** - partly planned by the Framers, partly the accident of history - **and it prevents violence and war. It prevents religious warfare, it prevents secessionist warfare, and it prevents racial warfare. It is part of the reason why democratic majoritarianism in the United States has not produced violence or secession for 130 years, unlike the situation for example, in England, France, Germany, Russia, Czechoslovakia, Yugoslavia, Cyprus, or Spain. There is nothing in the U.S. Constitution that is more important or that has done more to promote peace,**

prosperity, and freedom than the federal structure of that great document. There is nothing in the U.S. Constitution that shouldabsorb more completely the attention of the U.S. Supreme Court.

C. Nuclear War

Pinkerton 3
(James, Fellow at New America Foundation, "Freedom and Survival," http://www.ideasinactiontv.com/tcs_daily/2003/02/freedom-and-survival.html)
Historically, the only way that the slow bureaucratic creep of government is reversed is through **revolution** or war. And that **could happen.** But there's a problem: **the next American revolution won't be fought with muskets. It could well be waged with proliferated wonder-weapons.** That is, about the time that American yeopersons decide to resist the encroachment of the United Nations, or the European Union—or the United States government—**the level of destructive power in a future conflict** could remove the choice expressed by Patrick Henry in his ringing cry, "Give me liberty, or give me death." The next big war **could kill everybody, free and unfree alike.**

1NC Energy Shell

A. States Control Ocean Energy Decisions – control is an INTEGRAL part of federalism

Griset 2011
(Todd J., practices law with Preti Flaherty's Energy and Telecommunications Group from the Augusta, Maine office. His clients include renewable and other energy developers, industrial and forest products manufacturers and commercial entities, "HARNESSING THE OCEAN'S POWER: OPPORTUNITIES IN RENEWABLE OCEAN ENERGY RESOURCES", Marine Law Institute, University of Maine School of Law, Ocean and Coastal Law Journal, Lexis)

C. States' Roles In addition to this complex web of federal regulation, **states retain considerable authority regarding offshore renewable energy projects** in their adjacent waters. **Each state has broad discretion to regulate such projects**; the resulting lack of uniformity of state regulation adds yet another layer of regulatory risk to projects. **Reflecting federalism -- the balance between states' rights and federal rights-- the federal** Coastal Zone Management Act (**CZMA**) n124 **requires applicants for federal licenses or permits affecting a state's costal zone to obtain a state certification that a proposed project is consistent with that state's coastal zone management program**. n125 **If a state refuses** to issue such a consistency certification, **the Secretary of Commerce may overrule** the state and authorize the issuance of a permit **only if** the Secretary concludes **after a notice and comment period that the proposed activities are either consistent with the objectives of the [*416] CZMA, or are "otherwise necessary in the interest of national security**." n126 Thus, **the CMZA provides states with a powerful tool in deciding whether to allow the development of offshore renewable energy projects.** Furthermore, **electricity generated by an offshore project**--**even one** sited **in federal waters**--**must** generally **be transmitted to shore for distribution and consumption**. In practical terms, **this requires crossing state-jurisdictional coastal zones**. n127 **This creates a significant role for states in reviewing and permitting the transmission cables needed to carry the power produced at sea to consumers on land**, both in leasing subsurface rights for laying cable and in reviewing the utility aspects of the proposed transmission infrastructure. Even where a state's authority is limited to reviewing the onshore transmission development associated with an offshore energy project, in practice, **states' evaluations of these** transmission **aspects are** often informed by the understanding that the transmission and generation components are each **integral to the fate of the project.** n128 **States may also affect the fate of projects through** their **regulation of utility activities**. Through the exercise of their rights to regulate utilities and establish utility retail rates, **states** generally **have jurisdiction to approve power purchase agreements between offshore energy project developers and utilities**. **Securing approval** of such power purchase agreements **is a critical step in any project's successful development**, as developers are generally reluctant to incur the major capital costs required to develop an offshore project without the certainty of an offtake agreement for the power to be produced. n129 While such state review is generally conducted by public utilities commissions or their analogues, experience has shown that **issues beyond utility ratemaking, such as aesthetics or environmental considerations, often end up being raised** in these utility forums. For example, the Massachusetts Department of Public Utilities heard extensive testimony on such issues in the context of its review of the proposed power purchase agreement between the utility provider National Grid and Cape Wind. n130 **Because of** [*417] **the power reserved to states, such issues may play a large role in the ultimate success of renewable ocean energy projects**. This state regulatory role rests on top of the multiple layers of federal regulation described above, adding another layer of regulatory complexity.

B. Clean energy boosts states power now – that's the lynchpin of federalism – the plan crushes that

Milford et al 12

(Lewis, President and founder of the Clean Energy Group and the Clean Energy States Alliance non-resident Senior Fellow at the Brookings Institution, Toby Rittner, runs the day-to-day operations of the Council of Development Finance Agencies (CDFA), which includes management of a 32 member Board of Directors, and the organization's various educational, advocacy and research initiatives, Robert G. Sanders, formerly the Managing Director of Energy Finance for The Reinvestment Fund, he provides consulting services in the areas of sustainable development, clean energy and community development, "Clean Energy and Bond Finance Initiative (CE+BFI): An Action Plan to Access Capital Markets," http://www.cleanegroup.org/assets/Uploads/CE+BFI-Action-Plan-to-Access-Capital-Marketsv3.pdf)

States as Innovators: The Emergence of a New Federalism¶ **For clean energy in the last decade, states, regions and localities have been the innovators. From funding topolicy-making to economic development and new finance models, states have shaped the direction of public policy, and helped create a new industry.** Of course, the Obama Administration's financial support through a variety of stimulus related programs has helped tremendously in the last few years.¶ But **with federal support in decline**, along with the continuing national debt concerns and political paralysis, **what kind of new federal and state financing actions are needed to move forward—and do states**, regions and localities **need to do even more?¶ Most experts believethe answer is yes—that decreasing federal support means states** and localities **must do more**. The Brookings Institution recently proposed a broad "federalism" agenda for the next president after the 2012 election:¶ **Remaking the economy**, in essence, **requires a remaking of federalism so that governments at all levels "collaborate to compete" and work closely with each other and the private and civic sectors to burnish American competitiveness in the new global economic order.¶ The time for remaking federalism could not be more propitious. With Washington mired in partisan gridlock, the states and metropolitan areas are once again playing their traditional roles as "laboratories of democracy" and centers of economic and policy innovation. An enormous opportunity exists** for the next president **tomobilizethese federalist partners in a focused campaign for national economic renewal.**

C. Federalism is key to solve civil war

Calabresi '95

(Steven, Associate Professor, Northwestern University School of Law, December, "Symposium: Reflections On United States V. Lopez: "A Government Of Limited And Enumerated Powers": In Defense Of United States V. Lopez," 94 Mich. L. Rev. 752, pg lexis//um-ef)

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Pinkerton 3
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B. Federal Action without prior state consultation GUTS the current federal model in ocean policy – oil and gas issues prove

Ocean Commission 2k4
(U.S. C OMMISSION ON O CEAN P OLICY M EMBERS AND A FFILIATIONS Chairman Admiral James D. Watkins, USN (Ret.) Chairman and President Emeritus Consortium for Oceanographic Research and Education Washington, D.C. Robert Ballard, Ph.D. Professor of Oceanography Graduate School of Oceanography University of Rhode Island Ted A. Beattie President and Chief Executive

Officer John G. Shedd Aquarium, Illinois Lillian Borrone Former Assistant Executive Director Port Authority of New York and New Jersey James M. Coleman, Ph.D. Boyd Professor, Coastal Studies Institute Louisiana State University Ann D'Amato Chief of Staff, Office of the City Attorney Los Angeles, California Lawrence Dickerson President and Chief Operating Officer Diamond Offshore Drilling, Inc., Texas Vice Admiral Paul G. Gaffney II, USN (Ret.) President Monmouth University, New Jersey Marc J. Hershman Professor, School of Marine Affairs University of Washington Paul L. Kelly Senior Vice President Rowan Companies, Inc., Texas Christopher Koch President and Chief Executive Officer World Shipping Council, Washington, D.C. Frank Muller-Karger, Ph.D. Professor, College of Marine Science University of South Florida Edward B. Rasmuson Chairman of the Board of Directors Wells Fargo Bank, Alaska Andrew A. Rosenberg, Ph.D. Professor, Department of Natural Resources and the Institute for the Study of Earth, Oceans, and Space University of New Hampshire William D. Ruckelshaus Strategic Director Madrona Venture Group, Washington Paul A. Sandifer, Ph.D. Senior Scientist National Oceanic and Atmospheric Administration South Carolina, pg online @ http://govinfo.library.unt.edu/oceancommission/documents/pre_pub_fin_report.pdf //um-ef)

In the area of natural resource management, **one of the more interesting, innovative, and sometimes contentious features of the nation's system of federalism is the relationship between the federal government and coastal state governments with respect to the control and shaping of ocean activities in federal waters.** Historically, this relationship has taken on many hues and forms, but **its policy and legal aspects have been largely structured** over the last three decades **by the development of one section of a single law, the** so-called federal consistency provision (Section 307 of the Coastal Zone Management Act (**CZMA**)). As noted earlier in this chapter, **the promise of federal consistency was one of two incentives** (the other being grant money) **Congress provided to encourage state participation in this voluntary program**. In very general terms, **it is a promise that federal government actions that are reasonably likely to affect the coastal resources of a state with an approved co astal management program will be consistent with the enforceabl e policies of that program**. Under some circumstances, **it is a limited waiver of federal authority in an area—offshore waters seaward of state submerged lands—in which the federal government othe rwise exercises full jurisdiction over the management of living and nonliving resources.** The underlying principle of **federal consistency represents a key feature of cooperative federalism: the need for federal agencies to adequately consider state coastal management programs by fostering early consultation, cooperation, and coordination before taking an action that is likely to affect th e land or water use or natural resources of such state's coasta l zone. It facilitates significant input at the state** and local **level from those who are closest to the issue and in a position t o know the most about their coastal resources**. The process, however, is not one-sided. For states to exercise federal consistency authority, they must submit and receive approval of their coastal management programs from the Secretary of Commerce. Congress established the general criteria for approval of the programs, including a review by other fe deral agencies before the plans are officially authorized. A core criterion for program approval is whether the management program adequately considers the national interest when planning for and managing the coastal zone, including the siting of facilities (such as energy facilities) that are of greater than local significance. Once a state has received approval, federal consistency procedures are triggered. Under current practice, states only review federal actions that have reasonably fore seeable coastal effects. There is flexibilit y in the law to allow agreements between states and federal agencies that can streamline many aspe cts of program implementation. For example, there may be understandings with respect to classes of activities that do not have coastal effects. Otherwise, the decisions about such effects are made on a case-by-case basis. **There have been disagreements between federal agencies and states on some coastal issues, the more high profile ones largely in the area of offshore oil and gas development.** (For a further discussion of this issue, see Chapter 24.) **Nevertheless, in general, the federal consistency coordination process has improved federal-state relationships in ocean management.** States and local governments have to consider national interests while making their coastal management decisions and **federal agencies are directed to adjust their d ecision making to address the enforceable policies of a state's coastal management program. In the event of a disagreement between the state and a federal agency, the agency may proceed with its activity over the state's objection, but it must show that it is meeting a certain level of consistency**. In a separate part of the federal consistency section, the coastal activities of third party a pplicants for federal licenses or permits are required to be consistent with the state's program. If the state does not certify th at the activities will be consistent, the federal agency shall not grant the license or permit and the proposed action may not go forward. An applicant can appeal such a decision to the Secretary of Commerce, who has certain specified ground s on which he or she can overturn the state's finding of inconsistency. Today, after some thirty years of evolution in the practice and implementation of this rather unusual intergovernmental process**, federal agencies do not take the consistency standard lightly,** as it is a fairly high threshold to meet. **The result, according to N** ational

Oceanic and **A**tmospheric **A**dministration, **has been an outstanding level of cooperation and negotiation between states and federal agencies** 15 such that approximately 93-95 percent of the activities are approved.

C. U.S. federalism is modeled and solves global war

Calabresi 94

(Steven, Calabresi, Assistant Prof – Northwestern U., 1994, Michigan Law Review, p. 831-2)

First, the rules of constitutional federalism should be enforced because **federalism is** a good thing, and it is **the best and most important structural feature of the U.S. Constitution**. Second, **the political branches cannot be relied upon to enforce constitutional federalism,** notwithstanding the contrary writings of Professor Jesse Choper. Third, the Supreme Court is institutionally competent to enforce constitutional federalism. Fourth, the Court is at least as qualified to act in this area as it is in the Fourteenth Amendment area. And, fifth, the doctrine of stare decisis does not pose a barrier to the creation of any new, prospectively applicable Commerce Clause case law. The conventional wisdom is that Lopez is nothing more than a flash in the pan. Elite opinion holds that the future of American constitutional law will involve the continuing elaboration of the Court's national codes on matters like abortion regulation, pornography, rules on holiday displays, and rules on how the states should conduct their own criminal investigations and trials. Public choice theory suggests many reasons why it is likely that the Court will continue to pick on the states and give Congress a free ride. But, it would be a very good thing for this country if the Court decided to surprise us and continued on its way down the Lopez path. Those of us who comment on the Court's work, whether in the law reviews or in the newspapers, should encourage the Court to follow the path on which it has now embarked. The country and the world would be a better place if it did. We have seen that **a desire for both international and devolutionary federalism has swept across the world in recent years.** To a significant extent, **this is due to global fascination with and emulation of our own American federalism success story. The global trend toward federalism is an enormously positive development that greatly increases the likelihood of future peace, free trade, economic growth, respect for social and cultural diversity, and protection of individual human rights**. It depends for its success on the willingness of sovereign nations to strike federalism deals in the belief that those deals will be kept. The U.S. Supreme Court can do its part to encourage the future striking of such deals by enforcing vigorously our own American federalism deal. Lopez could be a first step in that process, if only the Justices and the legal academy would wake up to the importance of what is at stake

Uniqueness

2NC Uniq Wall

b. federal gridlock

Financial Times 1/19
(2014, http://www.ft.com/cms/s/0/018d57f6-7f6e-11e3-b6a7-00144feabdc0.html#axzz2tQpHhaaH)//
Barack **Obama will deliver his** sixth annual **State of the Union to Congress next week**. He will beseech lawmakers to enact many things, few of which will happen. The same will probably be true of his seventh and eighth. Meanwhile, for good or for ill, a rising generation of city leaders across the US are pushing ahead with their agendas. **At a time when US federal government is largely paralysed, it is in the states** – and particularly the cities – **where America's future is being played out.** Call it the new US federalism.

c. SC rulings on state rights

Cohen and Lithwick 2/14
(David and Dahlia, "It's Over: Gay Marriage Can't Lost in the Courts," http://www.slate.com/articles/news_and_politics/jurisprudence/2014/02/virginia_s_gay_marriage_ban_ruled_unconstitutional_a_perfect_record_for.html)
The first part is all about federalism, not equality. Kennedy painstakingly explained that the federal **Defense of Marriage Act offended basic principles of states' rights because, historically, the states have always defined marriage and the federal government just goes along for the ride.** By defining marriage for the federal government as only between a man and a woman, **DOMA had infringed on the sovereignty of the states that define marriage otherwise,** like New York did in Windsor, by including two women in its definition of marriage.

2NC Uniq: Now key

Now is the key time

Ryan 13
[Erin Ryan, Associate Professor, Lewis & Clark Law School, Portland, Oregon, U.S.A; Fulbright Professor of Law, Zhongguo Haiyang Daxue (Ocean University), Qingdao, CHINA [. "The Once and Future Challenges of American Federalism: The Tug of War Within" The Ways of Federalism in Western Countries and the Horizons of Territorial Autonomy In Spain. Ed. Alberto López Basaguren & Leire San-Epifanio. Springer]
The dilemmas of American federalism have become especially palpable in recent years, reflecting the **progressing demands** on all levels of government **to meet the inexorably more complicated challenges** of governance **in an increasingly interconnected world**.2 Some reflect similar dilemmas in other federalist societies, while others are unique to our own particular constellation of national, state, and municipal governance.3 Some federalism dilemmas are of genuine constitutional import, others more sound and fury—signifying little beyond the substantive political agenda of one interest group or another.4 **Each heralds the potential for real consequences in the political arena**—and indeed, these consequences are what receive the most sustained public attention. **The political consequences of federalism dilemmas are apparent throughout the policy spectrum. They are visible in the litigation over health care** reform efforts that has now reached the United States Supreme Court5 **and in similar battles over environmental governance and climate** policy,6 **banking and financial services regulation**,7 **immigration** policy,8 **and gay marriage**.9 Consequences are also visible in the emergence of popular constitutional political movements, such as the "Tea Party" 10 and even the "Tenthers."11 The latter are named for the Tenth Amendment to the U.S. Constitution that affirms our system of dual sovereignty, which divides sovereign authority between local and national government at the state and federal levels.12 After decades of playing a merely supporting role in U.S. federalism theory,13 the Tenth Amendment has emerged as a passionate site of political contest, rallying advocates for state right-to-die legislation,14 home schooling,15 and sectarian education,16 and among opponents of Medicaid and Medicare,17 federal gun laws,18 tax collection,19 drivers' license requirements,20 and the deployment of National Guard troops abroad.21

Uniq: Environmental Federalism high now

Enviro fed high now – FG delegates all local environmental issues to states

JONATHAN H. **ADLER**. 7/11/**2014**. JOHAN VERHEIJ MEMORIAL PROFESSOR OF LAW DIRECTOR, CENTER FOR BUSINESS LAW AND REGULATION CASE WESTERN RESERVE UNIVERSITY SCHOOL OF LAW SENIOR FELLOW PROPERTY & ENVIRONMENT RESEARCH CENTER. Subcommittee on Environment and the Economy Committee on Energy and Commerce U.S. House of Representatives. http://docs.house.gov/meetings/IF/IF18/20140711/102452/HHRG-113-IF18-Wstate-AdlerJ-20140711.pdf // GD

Both the **federal and state governments play a role in environmental protection**. Each has a comparative advantage in addressing particular types of environmental concerns. Apart from such policy considerations, however, **the U.S. Constitution also constrains the sorts of environmental policies that may be adopted by each level of government**. It is a fundamental principle of our constitutional order that the federal government is one of limited and enumerated powers, and that those powers not delegated to the federal government are reserved to the states and the people. All federal laws, no matter their value or purpose, must be enacted pursuant to the federal government's enumerated powers and may not transgress other constitutional constraints. This is as true for environmental protection as it is for national security or health care. The constitutional system of "dual sovereignty" limits federal power and recognizes the "separate and independent autonomy" of the states.1 **At the same time, our federalist system constrains what states may do, through both express and implied structural limits on state authority.** As a consequence, not every level of government may enact every potentially desirable for environmental protection. Rather, **our constitutional structure leaves both the federal and state governments with realms in which they may operate to advance environmental goals** while simultaneously providing for some degree of interjurisdictional competition among and between the several states. **Constitutional limits on fed**eral **power need not come at the expense of environmental protection.** The **division of authority between the federal and state governments counsels that Congress think carefully about the nature and scope of federal environmental regulation**. Fiscal constraints and the inherent limits of centralized regulatory structures reinforce the wisdom of focusing federal efforts in those areas where the federal government may do the most good. Specifically, the federal government should concentrate its efforts in those areas where the federal government has a comparative advantage or where the separate states are unlikely to be able to address environmental concerns adequately. For instance, there is a compelling case to made that the federal government should take the lead in addressing interstate spillovers. Downstream and downwind jurisdictions should not be at the mercy of their upstream and upwind neighbors. Further, there is a powerful case to be made that the **federal government should exercise leadership in scientific research on the nature and scope of environmental concerns and, in some areas, provide incentives for the development of environmentally friendly technologies.** When it comes to developing and enforcing environmental standards for localized environmental concerns, however, the case for federal intervention is comparatively weak. Not coincidentally, the constitution constrains federal efforts to reach some localized environmental concerns. Again, however, such constraints need not compromise environmental protection. To the contrary**, insofar as the constitution encourages policy makers to think carefully about the comparative strengths and weaknesses of federal intervention, it may actually enhance this nation's system of environmental protection.**

Environmental federalism high now

Northrop and Sasson 08 (Michael and David, Michael Northrop is Program Director for Sustainable Development at the Rockefeller Brothers Fund. David Sassoon runs SolveClimate.com, a Web site dedicated to debating and advancing solutions to global warming, 6/3, "States Take the Lead on Climate With the Bush Administration and Congress failing to act, many states are devising sweeping climate and energy policies that could be a blueprint for a future national climate policy", http://e360.yale.edu/feature/states_take_the_lead_on_climate/2015/)

The federal government in the Bush era **has done little to tackle our most pressing environmental problem — climate change**. Yet there is one bright side amid Washington's inaction: **Many states have been stepping into the void and adopting comprehensive climate**

change policies that can be a model for the coming federal legislation to slow global warming. The leadership of states such as California, Arizona, Connecticut, New Jersey, and Florida is crucial not only because it provides a template for federal climate legislation that will no doubt be adopted under the next presidential administration. **State action is** also **vital** because among the top 75 emitters of greenhouse gases worldwide, half are U.S. states. Individually, the size of many of these state economies rivals those of most countries. State climate policy initiatives — though not yet implemented on a national scale — are collectively among the most advanced anywhere in the world. They provide a profound but largely unrecognized platform for national action, and for a potential reassertion of global environmental leadership by the United States. Indeed, state climate initiatives have provided hope to those in the global community who have waited patiently for the United States to engage meaningfully in international climate efforts. The decisive action of many states — 27 currently have or are developing comprehensive climate action plans — is taking on added importance for another reason: Innovative state climate and energy policies are showing skeptics in this country and in Congress that, rather than being a burden, ground-breaking energy conservation and renewable energy programs can create economic opportunity. Many of the **more than 300 climate policies and mechanisms devised by various states** will provide new business opportunities, as all sectors of society — housing, industry, commerce, energy, agriculture, forestry, transportation, waste management — adopt greater energy efficiencies and move to alternative sources of energy. Against the backdrop of inaction by the Bush administration and Congress, **the states have moved farther and more rapidly than most people realize**. Indeed, this September, **ten mid-Atlantic and Northeastern states will begin implementing a cornerstone of effective national or global climate policy:** A so-called "cap-and-trade" system under which emitters of greenhouse gases — in this case, power plants — must begin steadily reducing carbon emissions and can sell a portion of their emissions allotment once they begin implementing efficiencies. Power plants that fail to meet their emissions targets could buy allotments from more efficient utilities.

States are implementing environmental policies now

Dutzik et al 09 (Tony, Frontier Group, Environment America Research & Policy Center, Environment California Research & Policy Center December, "America on the Move State Leadership in the Fight Against Global Warming, and What it Means for the World", http://www.stateinnovation.org/Publications/All-Publications/2009-10-EnvironmentAmerica-AmericaontheMove.aspx)
States Play a Critical Role in Implementing New Federal Initiatives With the arrival of the Obama ad- ministration in Washington, D.C., the federal government is now a willing part- ner – not an obstacle – in state efforts to reduce global warming pollution. **States have important roles in implementing some of the clean energy policies** already adopted by Congress and the Obama administration over the past year – **most notably the programs created under the** American Recovery and Reinvestment Act (**ARRA**). Many **ARRA programs have a sig- nificant state or local government com- ponent**. At least four of **those programs should lead to quantifiable reductions in global warming** pollution **over the next decade:** • **Weatherization:** The ARRA pro- vides $5 billion in funding to ex- pand the Weatherization Assistance Program, which works with states to implement programs to improve residential energy efficiency for low- income homeowners. Weatherization programs typically reduce heating bills by approximately 32 percent, curbing emissions and helping low- income families make ends meet.89 • **State energy program**: The ARRA also allocates $3.1 billion to the De-

partment of Energy's State Energy Program, which distributes funds to help state governments improve en- ergy efficiency and expand the use of renewable energy in their states. The program has historically saved more than $7 in energy costs for every federal dollar invested.90 • **Energy efficiency and conserva- tion block grants**: An additional $2.6 billion is directed under the ARRA toward grants to state and local governments for specific energy efficiency initiatives. • **Public housing energy efficiency:** Finally, $250 million is allocated through the U.S. Department of Housing and Urban Development for improving the energy efficiency of public housing developments, which are generally owned and oper- ated by local government agencies. **Programs already funded through the ARRA can be expected to deliver emis- sion reductions of at least 12 million metric tons of carbon dioxide, including 10 million metric tons in states without global warming emission caps**. Because not all funding under ARRA has been dis- tributed, **emission reductions will likely be even greater than this estimate.**

Uniq: Fism now: Energy

Cooperative federalism solving electricity sector now

Hari M. **Osofsky &** Hannah J. **Wiseman. 2013.** Hari M. Osofsky is an Associate Professor & 2011 Lampert Fesler Research Fellow, University of Minnesota Law School; Associate Director of Law, Geography & Environment, Consortium on Law and Values in Health, Environment & the Life Sciences; Affiliated Faculty, Geography & Conservation Biology; Fellow, Institute on the Environment. Hannah J. Wiseman is an Assistant Professor at the Florida State University College of Law. "Dynamic Energy Federalism". http://ssrn.com/abstract=2138127 // GD

Energy governance approaches also vary in the extent to which they encourage or rely upon cooperativeness. There are many examples of cooperative federalism along both the vertical and horizontal axes. For instance, states **are trying to work together in the electricity context through** 52 **MISO's** Multi-Value Project (**MVP**) introduced above, which will provide expanded transmission to allow more generation to connect to the grid **while** also **connecting regional benefits to costs in order to ensure fair cost sharing.2**15 **The states governed by MISO,** through their Organization of MISO States described above, a**lso cooperate regularly to intervene in FERC proceedings**—often shifting among positions that support a Midwest ISO policy or filing, oppose it, or follow a middle ground.216 **Focusing on only cooperative federalism,** however, **would miss the many critical uncooperative dynamics that help to structure interactions along both axes and resulting governance approache**s. On the vertical axis, **for example, lawsuits filed by states opposing FERC's federal imposition of transmission siting authority made FERC restart its national interest electric transmission corridor designation process**. In a case brought by the Minnesota Public Utilities Commission and environmental groups,217 for example, the Fourth Circuit held that if a state commission denies a transmission siting application, this does not give FERC federal authority to select an appropriate site.218 As with directional hierarchy, interactions among entities often vary in how cooperative and conflictual they are over time. Ann Carlson has explained in the environmental context that **these iterative interactions can help to foster needed regulation over time**.219 These types of interactions also occur throughout energy law. The Delaware River Basin Commission's governance of natural gas well development, discussed in depth in Hybrid Energy Governance, exemplifies these shifting relationships within a regional institution. The state members and single federal representative on this Commission initially cooperated to draft a comprehensive set of regulations governing the location of well sites, controlling erosion from sites, requiring extensive surface and subsurface water testing prior to drilling and fracturing, and imposing a number of 53 other constraints on the gas extraction process.220 The process temporarily broke down, however, when individual state members began to question the adequacy of the process (with New York demanding an environmental impact statement under the National Environmental Policy Act in federal court221) and the substance of the regulations (with Delaware's governor asserting that he would not vote for the regulations, which he viewed as insufficiently protective of the environment222). Based on these state concerns, the DRBC has delayed finalizing its rules and has continued to hold hearings and respond to public comments in an attempt to reach a constructive compromise.223

Increasing states control over electricity sector now

Hari M. **Osofsky &** Hannah J. **Wiseman. 2013.** Hari M. Osofsky is an Associate Professor & 2011 Lampert Fesler Research Fellow, University of Minnesota Law School; Associate Director of Law, Geography & Environment, Consortium on Law and Values in Health, Environment & the Life Sciences; Affiliated Faculty, Geography & Conservation Biology; Fellow, Institute on the Environment. Hannah J. Wiseman is an Assistant Professor at the Florida State University College of Law. "Dynamic Energy Federalism". http://ssrn.com/abstract=2138127 // GD

C. Regulatory The combination of physical and market challenges highlighted in Sections I.A and I.B combine to create daunting regulatory challenges in an energy system which needs more flexibility in generation and access to 24 transmission, more consumer options, and, as always, a continuous and adequate supply of electricity. These **challenges largely fall to federal and local entities, which often are not fully equipped with the jurisdictional reach or the governance capacity to fully address them**: **Although energy resources are distributed unequally around the world, and markets for them are increasingly transnational, these resources are primarily regulated at a national or subnational level due to the international law principle of state sovereignty over natural resources.** This principle both gives the United States property rights to and control over its land-based and off-shore energy resources and makes it dependent on the other countries with energy resources that it needs.100 Within the United States, **a number of local, regional, federal, and state regulations, standards, and quasi-formal governance schemes shape both the physical structure of America's energy system and intervene in the market forces described above.** These public controls also provide unique market opportunities, such as the construction of new transmission lines and the addition of smart grid technologies, which can enable new generation sources to connect to the grid and empower consumers to influence the type, quantity, and price of electricity they consume.101 25 **Local and state governments have broad control over the choice of fuel used to**

produce electricity and the type of generation facilities constructed. Increasingly, cities102 and states write renewable portfolio standards103 that require a certain percentage of electricity to come from renewable sources, for example. These force utilities, over time, to switch generation sources even if they have to abandon beneficial long-term contracts with fossil fuel based generators.104 Local and **state governments also affect the type of generation chosen through their regulation of utility rates or through direct mandates for generation**. City councils sometimes direct municipally owned utilities, for example, to build new renewable generation, whereas states that regulate utility rates tend to only approve affordable construction projects that keep rates down.105 Through renewable portfolio standards and other decisions about the energy generation mix, **state and local governments directly or indirectly require the construction of new transmission to connect renewable generation to the utilities that must purchase it.** Texas has gone the furthest in this regard, requiring its Public Utility Commission to select utilities to build high-priority transmission lines to wind generation built under the state's renewable portfolio standard.106

Uniq: Federalism High/ States power low

Municipalities prove state power outweighs

Wienschenk, 7/28
(Carl, IT Business, "States Versus Feds on Municipal Broadband", http://www.itbusinessedge.com/blogs/data-and-telecom/states-versus-feds-on-municipal-broadband.html, July 28, 2014) Akshay Bapat

The fight over the right of **municipalities** to build their own networks seems like such a no-brainer that it takes some digging to even figure out why opposition to the idea exists. But exist it does. Laws in many **states constrain municipalities from building such network**s. The debate, which pits **Republicans against Democrats in** Washington, DC, gradually is **coming to a head**. Bloomberg reports that Chattanooga's Electric Power Board, which doubles as a broadband service provider, has petitioned The **Federal Communications Commission** (FCC) to allow it to build a network in areas served by AT&T and Charter despite Tennessee laws prohibiting such a build. The story says that FCC chairman Tom Wheeler **has the power to override state law**. A similar petition has been filed by Wilson, N.C., for the right to expand its Greenlight municipal network, according to The Wilson Times. North Carolina also has laws against such networks. The situations in North Carolina and Tennessee are the tip of what at one level is a classic ideological battle, according to the Bloomberg story: **There is a growing political divide in Washington over Internet services provided by local governments, at times for lower prices than companies charge, or to connect areas that weren't being served. Democrats have said municipal broadband networks should be free of state restrictions and Republicans have opposed overriding state laws. Municipalities position the alternative networks as ways to provide far better service than those areas currently get**. Those builds create jobs and force incumbents to offer better and less expensive services, proponents say. Earlier this month, Republicans in the House agreed to an amendment to the 2015 Financial Services spending bill put forward by Tennessee Representative Marsha Blackburn that would keep the FCC from overriding the state laws. Roll Call quotes her as casting it as a states' rights issue: "Twenty states across our country have held public debates and enacted laws that limit municipal broadband to varying degrees," she said on the House floor Tuesday evening. "**States have spoken and said we should be careful and deliberate in how we allow public entry into our vibrant communications marketplace."** Vox offers a good overview of the situation and states the case against municipal networks far beyond Blackburn's knee-jerk states' rights point. Tim Lee notes that such projects are financially risky, and **opinions differ on whether taxpayer money should be used to compete with private companies. He also points to heavy lobbying and political advertising done by established service providers to squelch this potentially dangerous form of competition. Clearly, however, there is a very strong case for municipal networks.** The proof can be seen in the middling performance of broadband providers in the United States compared to other nations. Blackburn's amendment has little chance of being written into law. However, the bigger issue of whether municipalities will be able to build their own networks free of state interference is far from being settled.

Uniq: Fism Up – Courts

Courts restoring state power

Garry 6
(Patrick M., Associate Prof – U. South Dakota School of Law, Seton Hall Law Review, Lexis, July '06) Akshay Bapat
The revival of federalism has become a defining theme of the modern Court. Commentators have described the Court's decisions as sparking a "federalism revolution." This so-called revolution comes after a long dormancy. From the late 1930s to the early 1990s, [*852] constitutional provisions related to federalism were largely ignored. However, under the leadership of the late Chief Justice Rehnquist, **the Court has attempted to revive the constitutional role and authority of the states.** Through a wide array of cases employing both the Tenth and Eleventh Amendments, **the Court has** stalled or even **reversed the constitutional drift of power from the states to the federal government** that began in the 1930s. **This "new federalism" has attempted to resuscitate the role of the states in the constitutional system, as well as revive certain federalism doctrines that were abandoned** during the New Deal. Just as a frustration with the ineffectual response of the states to the Great Depression caused regulators and constitutional lawyers to favor a dramatic expansion of the national government during the 1930s, a frustration with and suspicion of large, centralized government and its inflexible bureaucracies has helped fuel the current drift toward empowering smaller, localized governments. But in addition to this size-of-government concern, there is another side of federalism - the individual liberty side. In the view of the constitutional Framers, a vibrant federalism would help ensure individual liberty by limiting and monitoring the power of the federal government to infringe on the liberties of its citizens.

Supreme Court ruling proves that our epistemological assumption has empirical validity

Fisk, 7/3
(Catherine, Chancellor's Professor of Law at University of California Irvine, Bloomberg Law, "Harris v. Quinn Symposium: Court departs from federalism, First Amendment jurisprudence", http://www.scotusblog.com/2014/07/harris-v-quinnsymposium-court-departs-from-federalism-first-amendment-jurisprudence/, July 3, 2014,) Akshay Bapat
In Harris v. Quinn, the Court struck down an Illinois law authorizing the state to agree with the SEIU, **the union that represents government-paid home care workers**, **that the workers must pay their fair share of the cost of the legal services that the SEIU is required by law to provide**. The Court held that the contract provision requiring payment of the fair share of the costs of the services violated the government employees' First Amendment rights to be free from providing financial support to collective bargaining. **The decision disregards the Court's longstanding principle that it will not decide questions of state law**. It unsettles decades of precedent about public-sector unions, and is difficult to reconcile with the First Amendment rights of government workers or with the Court's other cases on when compulsory fees constitute compelled speech. **Along with several other states**, Illinois enacted laws deeming home health-care workers government employees. **The government pays them and imposes extensive requirements governing eligibility for hire**, training, hours of work, pay, and working conditions. Illinois and other states enacted laws making home health-care work government employment for the same reasons states long ago took over providing other services for the common good that in the nineteenth century had been provided by private or charitable companies, including libraries, schools, legal and medical services for the poor, and police and fire protection. State funding, training, and regulation improved the working conditions of those who provide these important services and ensured that the public who benefits from these services receives high-quality service. Home health-care workers are employees just as doctors and nurses in public hospitals and legal aid lawyers work for a patient or client who both receives and directs the provision of services, and they are employees even though they do not work in a centralized location, like park rangers, police officers, and firefighters. A majority of home health-care workers in Illinois chose to have the SEIU represent them for purposes of collective bargaining. Under Illinois labor law, **as under the labor laws governing private-sector employment and most state and local employment**, when a majority of workers chooses union representation, the union represents every employee in the workplace or other job unit, including those who voted against unionization. Union governance works like political governance in that respect – the majority's wishes govern the selection of a representative. But unions, unlike government representatives, have a legally imposed duty of fair representation; they are required by law to act in the interest of everyone they represent, not just those who voted for the union. And not only must the union bargain a contract that treats all represented employees fairly, under the duty of fair representation it must also enforce the contract on behalf of all employees, including those who voted against the union. **In the half of states that have adopted so-called "right to work" legislation**, **and under yesterday's decision**, for Illinois home health-care workers, the union must even

negotiate and enforce the contract on behalf of those employees who choose to pay nothing for the services the union is legally required to provide. Right-to-work rules, **such as the one that the Court yesterday said is constitutionally required for Illinois home health-care workers**, **have generated hotly contested legal fights across the United States over the sixty-plus years since Congress first authorized states to adopt them in 1947**. **Until yesterday's decision**, state legislatures were free to choose whether to allow employers and unions to negotiate fair share fee provisions in their labor contracts. Unions strenuously oppose them because they believe it violates their own First Amendment rights to be legally compelled to provide free legal services to people who choose not to join. And they have a point: imagine a system in which a group of neighbors decides to form a private organization to advance a cause that they believe in (**whether it is neighborhood improvement**, civil rights, gun rights, or religion), and a court decides that the organization has a legal obligation to represent everyone in the neighborhood and to provide free legal services even to those who refuse to join and pay. If it were a homeowners association, the ACLU, the NRA, or a church, the Supreme Court would have little trouble seeing a First Amendment violation in imposing on a nonprofit membership organization a legal duty of fair representation without the ability to require payment of fair share fees; it might see that such a duty on a nonprofit constitutes a tax on the association and the associational rights of the members of the group. But one need not go so far as to think the Court's rule in Harris violates the First Amendment rights of the union and its dues-paying members. **Its decision is inconsistent with its own federalism jurisprudence on the deference it owes to state law**. As a matter of Illinois law, home health-care workers are Illinois government employees. Yet Justice Alito's majority opinion in Harris dismissed them as not "full-fledged" government employees and therefore created a special new First Amendment right of some indiscernible group of non "full-fledged" employees to refuse to pay the costs of union representation. **The Supreme Court does not sit to decide matters of state law**: Illinois treats home health-care workers as employees under state law, **and the Court is bound to follow Illinois law on this matter**. (The only other occasion I can recall in which the Court created a special constitutional right that turned on its own idiosyncratic resolution of a hotly disputed question of state law was in Bush v. Gore, when it halted the counting of uncounted votes based on its reading of Florida election law. The Court's decision that a state labor contract requiring employees to pay their fair share of the cost of contract negotiation and administration services violates the First Amendment rights of employees is also inconsistent with the Court's jurisprudence on the First Amendment rights of government employees as well as its cases concerning when financial contributions constitute compelled speech. In Garcetti v. Ceballos, **the Court held that there is no First Amendment protection for the speech of government employees on the job in the scope of their duties**. The Court therefore upheld retaliation against a Los Angeles deputy district attorney who blew the whistle on false police testimony. **In United States Civil Service Commission v**. National Association of Letter Carriers, in upholding the federal Hatch Act, **the Court held that government civil service employees have no First Amendment right to engage in partisan political activities even on their own time**. If government employees have no First Amendment rights to speak on the job on matters of public concern or to engage in political activity on their own time, including canvassing, wearing campaign buttons, or having bumper stickers on their cars, **it is hard to explain why government employees have a First Amendment right to refuse to pay for legal services that their union is legally required to provide them**. The Court also fails to reconcile yesterday's result with its decisions about when compelled financial contributions constitute compelled speech. In Keller v. California State Bar, for example, the Court upheld compulsory payment of bar dues by California lawyers. The Court failed to explain why bar dues are more important than fair share fees. All Justice Alito said in Harris was: "Licensed attorneys are subject to detailed ethics rules, and the bar rule requiring the payment of dues was part of this regulatory scheme. The portion of the rule that we upheld served the State's interest in regulating the legal profession and improving the quality of legal services. States also have a strong interest in allocating to the members of the bar, rather than the general public, **the expense of ensuring that attorneys adhere to ethical practices**. Thus, **our decision in this case is wholly consistent with our holding in Keller." Exactly the same could be said about home health-care workers in Harris**: Illinois has an "interest in regulating [home health-care workers] and improving the quality of [home health-care] services." Moreover, **Illinois also has an interest in making sure that home health-care workers adhere to appropriate standards of care and work under conditions that enable them to do so**, and in requiring all government-paid home health-care workers to contribute the cost of maintaining such a regulatory regime, just as integrated state bars have an interest in requiring all lawyers to contribute to a regime that regulates their conduct. That is exactly why the state chose to adopt a legal regime under which government-paid home health-care workers pay their fair share of regulations negotiated between the state and the union for mandatory training, compliance with minimum safety and health standards, and so forth. The Court has not distinguished Keller if I can substitute "home care services" or "home care workers" for "legal services" and "legal profession" and have all the same analysis remain unchanged.

Uniq: Fism Up – State Laws

South Carolina stance on gay marriage proves state law is strong

Whitson 14

(Will Whitson, reporter for NBC, July 29, 2014, http://www.wtoc.com/story/26143468/despite-circuit-court-ruling-alan-wilson-will-still-defend-states-same-sex-marriage-law**) Akshay Bapat**

South Carolina's Attorney General says he will defend out state's marriage law despite a federal court's decision against a same-sex marriage ban in other states.¶ This ruling has to do with a law in Virginia, but could end up affecting South Carolina laws in two ways.¶

First, the 4th Circuit Court of Appeals has federal jurisdiction over four states, including South Carolina. Of those four states, Maryland, already allows same-sex marriages.¶Attorneys General in Virginia and North Carolina have stated they won't challenge the court's decision, saying it applies as the federal interpretation of the law in these four states and therefore trumps state law.¶

This **decision by the 4th Circuit says a state can't grant marriage to a certain type of couple without granting it to all couples.If it isn't overturned by a higher court, this decision would have an effect on a similar case here in South Carolina**: Bradacs v. Haley.¶That case was filed by South Carolina Highway Patrol trooper Katherine Bradacs and her wife, Tracie Goodwin. That **suit was filed in August 2013 and is the first statewide challenge against the constitutional ban since the U.S. Supreme Court struck down parts of the Defense of Marriage Act**. ¶But supporters of South Carolina's marriage law point out same-sex marriage has been brought to the Supreme Court before and will likely see it taken there again.¶"**The recent court decisions are leading directly to another Supreme Court decision, but we think it's our job as a state to defend the laws as they are written,"** said Oran Smith of the Palmetto Family Council.¶Smith helped lawmakers draft what became South Carolina's law.¶Ryan Wilson sits on the other side of the issue as the executive director of SC Equality.¶"We're optimistic this opens the door to allow South Carolina to become a state with marriage equality somewhere in the future," said Wilson.¶**The attorney general's office has stated it will defend the law currently on the books which bans same sex marriage**. But one member of the office told me the attorney general doesn't make the laws, he just defends them. He says if it were a different law, he'd defend that as well.

Colorado case empirically proves Federalism high

Mitchell, 7/15

(Kirk, Denver Post, "Federal judge weighs arguments in Colorado gay marriage case", http://www.denverpost.com/news/ci_26154421/federal-judge-weighs-arguments-colorado-gay-marriage-case, July 15, 2014) Akshay Bapat

Attorneys for gay couples challenging Colorado's same-sex marriage ban say Attorney General John Suthers shouldn't be allowed to essentially concede the law is unconstitutional and at the same time expect a federal judge to uphold the law. "Justice delayed is justice denied," plaintiffs attorney Mari Newman said following a hearing Tuesday. "**The state's law is affecting real families." U**.S. District Judge Raymond Moore on Tuesday heard arguments for and against a motion by Suthers' office to stay proceedings in the case filed by six gay couples on July 1. Suthers' office requested a stay in proceedings in the recent federal case pending a final resolution in the Kitchen versus Herbert ruling by the 10th U.S. Circuit Court of Appeals. "The orderly administration of justice and the rule of law strongly favor a stay," says a motion by Suthers. "Quite simply, **the 10th Circuit's decision staying the Utah case is equally as authoritative as the merits of the decision and must be following in this case." In the Kitchen versus Herbert case**, a three-judge panel of the 10th U.S. Circuit Court of Appeals struck down Utah's same-sex marriage ban. **Plaintiffs in the Colorado federal case cite the decision in their request to overturn Colorado's similar ban**. Newman said Tuesday the state has decided not to oppose the plaintiffs' request for an injunction against Colorado's ban against gay marriage, but at the same time the state asks the court to allow that ban to remain in effect. In a recent motion, **Newman pointed out**

that Colorado is essentially conceding all of the plaintiffs' arguments. "Indeed, it is a virtual certainty that Plaintiffs will prevail on the merits of their challenge to Colorado's laws banning same-sex marriage," Newman wrote in a motion filed Friday. **The lawsuit was filed against Gov**. John Hickenlooper and Suthers. Moore gave attorneys until Friday to file motions. **A hearing is scheduled for Tuesday**. The state Supreme Court is considering a request by Suthers to stop county clerks from issuing marriage licenses to gay couples. Plaintiffs have until 3 p.m. on Wednesday to respond to an emergency motion filed by Suthers' office on Monday, asking the state's high court to order clerks issuing the licenses to stop. The AG's office has until 3 p.m. on Thursday to reply to any motions the plaintiffs file. Attorneys may request to present oral arguments, **but the Supreme Court may issue a ruling without them**, said Rob McCallum, **spokesman for the Colorado Judicial Branch**. Suthers says allowing county clerks to issue marriage licenses to same-sex couples while the state's voter approved-ban has not been struck down by a higher court creates "chaos" as clerks continue to ignore state law. The motion seeking the injunction was filed hours after an Adams County District Court judge shot down a similar request to stop Denver Clerk and Recorder Debra Johnson from issuing licenses to gay couples. Johnson and Pueblo County Clerk Gilbert Ortiz began issuing same-sex marriage licenses after a Boulder judge refused to stop that county's clerk from issuing the licenses. On July 9, Adams County District Court Judge C. Scott Crabtree ruled the state's ban on gay marriages unconstitutional, but he stayed the ruling from taking effect while Suthers' office appeals. The AG's office filed a notice of appeal on Monday and the trial court now has 90 days to send all of its records to the high court.

Federalism is high now—states have the authority to regulate marijuana

Veith 12 [Gene - Professor of Literature at Patrick Henry College, 11/8, "Federalism and marijuana", http://www.patheos.com/blogs/geneveith/2012/11/federalism-and-marijuana/ \\NL]
Colorado and Washington state voted in a referendum **to legalize marijuana**. Not just medical marijuana, recreational marijuana. (Oregon defeated a similar measure.) **The problem is, the sale and possession of marijuana are still illegal according to federal law. The states are trying to figure out what to do and how this would work.**
What we have is a crisis of federalism. Conservatives, who might normally oppose drug legalization, are in the position of championing states' rights, while liberals, who might normally favor legalized drugs, are in the unusual position of opposing federal regulation.
At any rate, **if the states can figure out how to implement that referendum, Colorado and Washington can expect all kinds of drug tourism**. That might not be a pleasant prospect.

Uniq: Fism Up – Court Appointments

New court appointments will expand federalism

Chemerinsky 6
(Erwin, Professor of Law and Political Science, Stanford Law Review, 6/06, Lexis, 6ftd) Akshay Bapat
If John **Kerry had won** the presidential election in November 2004 and had appointed the replacements for Rehnquist and O'Connor, these **federalism decisions likely would have been overruled. But with two Bush picks for the Supreme Court, the doctrine of limiting federal power will almost certainly remain and expand. The change in the composition of the Court makes it possible that even the Rehnquist Court's later decisions in favor of federal power could soon be reconsidered and reversed.** Especially with Justice Alito replacing Justice O'Connor,there is now the prospect that the Court will more aggressively protect states' rights and limit federal power.

Federal funding fails now- 8 reasons
Edwards 13 (Chris, "Fiscal Federalism", The director of tax policy studies at Cato, He is a top expert on federal and state tax and budget issues. Before joining Cato, Edwards was a senior economist on the congressional Joint Economic Committee, a manager with PricewaterhouseCoopers, and an economist with the Tax Foundation, June, http://www.downsizinggovernment.org/sites/downsizinggovernment.org/files/pdf/fiscal-federalism_0.pdf)
The theory behind grants-in-aid is that the federal government can create subsidy programs in the national interest to efficiently solve local problems. The belief is that policymakers can dispassionately allocate large sums of money across hundreds of activities based on a rational plan designed in Washington. **The federal** aid **system does not work** that way in practice. Most federal politicians are not inclined to pursue broad, national goals, but are consumed by the competitive scramble to secure subsidies for their states. At the same time, **federal aid stimulates overspending by state governments and creates a web of top-down rules that destroy state innovation. At all levels of the aid system, the focus is on maximizing the money spent and regulatory compliance, not on delivering quality services.** The following are **eight reasons why the federal aid system doesn't make any economic or practical sense and ought to be downsized or eliminated. 1. No magical source of federal funds**. Aid supporters bemoan the "lack of resources" at the state level and believe that Uncle Sam has endlessly deep pockets to help out. **But every dollar of federal aid sent to the states is ultimately taken from federal taxpayers who live in the 50 states**. It's true that the federal government has a greater ability to run deficits than state governments, but that's an argument against the aid system not in favor of it. **By moving the funding of state activities up to the federal level, the aid system has tilted American government toward unsustainable deficit financing. 2. Grants spur wasteful spending. The basic incentive structure of aid programs encourages overspending** by federal and state policymakers. One reason is that policymakers at both levels can claim credit for spending on a program, while relying on the other level of government to collect part of the tax bill. Another cause of overspending is that federal policymakers create program structures, such as matching, that prompt the states to increase spending. A typical match is 50 percent, which means that for every $2 million a state expands a

program, the federal government chips in $1 million. Matching reduces the "price" of states' added spending, thus prompting them to expand programs. Most federal aid is for programs that have matching requirements, with Medicaid being the largest such program. One way to reduce spending incentives is to convert open-ended matching grants to block grants. Block grants provide a fixed sum to states and give them flexibility on program design. The best example of such a reform was the 1996 welfare overhaul, which turned Aid to Families with Dependent Children (an open-ended matching grant) into Temporary Assistance for Needy Families (a lump-sum block grant). Similar block grant reforms should be pursued for Medicaid and other programs. Converting programs to block grants would reduce incentives for states to overspend, and it would make it easier for Congress to cut federal spending in the future. **3. Aid allocation doesn't match any consistent idea of need.** Supporters of federal grants assume that funding can be optimally distributed to those activities and states with the greatest needs. But even if such redistribution was a good idea, the aid system has never worked that way in practice. A 1940 article in Congressional Quarterly lamented: "The grants-in-aid system in the United States has developed in a haphazard fashion. Particular services have been singled out for subsidy at the behest of pressure groups, and little attention has been given to national and state interests as a whole."22 And a 1981 report by the Advisory Commission on Intergovernmental Relations concluded that "federal grant-in-aid programs have never reflected any consistent or coherent interpretation of national needs."23 It's the same situation today. With highway aid, for example, **some states with greater needs due to growing populations**—such as Texas—**consistently get the short end of the stick on funding**.24 Even if funds were allocated to the states based on need, state-level decisions can nullify federal efforts. For example, the largest education grant program, Title I, is supposed to target aid to the poorest school districts. But evidence indicates that state and local governments use Title I funds to displace their own funding of poor schools, thus making poor schools no further ahead than without federal aid.25 **4. Grants reduce state policy diversity**. **Federal grants reduce state diversity and innovation because they come with one-size-fits-all mandates.** A good example was the 55-mile-per-hour national speed limit, which was enforced between 1974 and 1995 by federal threats of withdrawing highway grant money. It never made sense that the same speed should be imposed in uncongested rural states and congested urban states, and Congress finally listened to motorists and repealed the law. Another example of top-down federal rules is the No Child Left Behind education law of 2002. To receive NCLB grant funding, the law required states to meet federal mandates, such as ensuring that all teachers were "highly qualified," that Spanish-language versions of tests be administered, and that certain children be tutored after school. Many states passed resolutions attacking NCLB for undermining states' rights. The Davis-Bacon labor rules are another example of harmful regulations tied to federal aid. State public works projects that receive federal aid must pay workers "prevailing wages." Since that generally interpreted to mean higher union-level wages, Davis-Bacon rules increase construction costs on government investments, such as highway projects. **5. Grant regulations breed bureaucracy. Federal aid is not a costless injection of funding to the states.** Federal taxpayers pay the direct costs of the grants, but **taxpayers at all levels of government are burdened by the costly bureaucracy needed to support the system**. The aid system engulfs government workers with unproductive activities such as proposal writing, program reporting, regulatory compliance, auditing, and litigation. Many of the 16 million people employed by state **and local governments must deal with complex federal regulations related to hundreds of aid programs**. There are specific rules for each program, which may be hundreds or even thousands of pages in length. There are

"crosscutting requirements," which are provisions that apply across aid programs, such as labor market rules. And there are "crossover sanctions," which are the penalties imposed on the states if they don't meet federal requirements. Each of the more than 1,100 aid programs have different rules, and the activities funded by the programs often overlap, which causes more confusion. For example, state and local officials deal with 16 different federal programs that fund first responders, such as firefighters.26 That tangle of programs not only creates a lot of paperwork, it may also lead to more fragmented planning of disaster response. **6. Grants cause policymaking overload**. One consequence of the large aid system is that the time spent by federal politicians on state and local issues takes away from their focus on truly national issues. In the years after 9/11, for example, investigations revealed that most members of the House and Senate intelligence committees did not bother, or did not have time, to read crucial intelligence reports.27 Many of these members were probably spending their time trying to steer budget monies toward local activities in their home states. **The federal involvement in hundreds of nonfederal policy areas overloads Washington's policy agenda.** President Calvin Coolidge was right in 1925 when he argued that aid to the states should be cut because it was "encumbering the national government beyond its wisdom to comprehend, or its ability to administer" its proper roles.28 **7. Grants make government responsibilities unclear.** The three layers of government in the United States no longer resemble the tidy layer cake that existed in the 19th century. Instead, they are like a jumbled marble cake with responsibilities fragmented across multiple layers. **Federal aid has made it difficult for citizens to figure out which level of government is responsible for particular policy outcomes**. All three levels of government play big roles in such areas as transportation and education, thus making accountability difficult. To make matters worse, politicians have become skilled at pointing fingers of blame at other levels of government, as was evident in the aftermath of Hurricane Katrina in 2005. When every government is responsible for an activity, no government is responsible. **8. Common problems are not necessarily national priorities. Policymakers often argue that various state, local, and private activities require federal intervention because they are "national priorities." But** as President Reagan noted in a 1987 executive order: "**It is important to recognize the distinction between problems of national scope (which may justify federal action) and problems that are merely common to the states (which will not justify federal action because individual states, acting individually or together, can effectively deal with them)**."29 Consider education. It is a priority of many people, but that does not mean that the federal government has to get involved. **State and local governments should be free to innovate in education and share best practices with each other, but there is no reason for top-down controls or funding from Washington**. Or consider federal aid for homeland security, which became popular after 9/11. Much of the federal funding in that area goes for items that could be funded locally, such as bulletproof vests for police officers. **There is no reason for federalizing spending** on local activities such as police and education—it just creates added bureaucracy and a tug of war over funding allocations. By contrast, when funding and spending decisions are made together at the state or local levels, policy tradeoffs will better reflect the preferences of citizens within a jurisdiction.

Federalism high—Mississippi abortion rulings prove

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(Callie, Jezebel, “Good News: Mississippi's Only Abortion Clinic Can Remain Open”, http://jezebel.com/good-news-mississippis-only-abortion-clinic-can-remain-1612932092, July 29, 2014) Akshay Bapat

The fate of **Mississippi's last** remaining **abortion clinic has been very tenuous for the past two years**, a result of **conservative lawmakers' increasingly creative and dastardly attempts to deny women reproductive autonomy**. Fortunately, **a federal appeals panel has just struck down the severe anti-abortion measure that would have caused it to close its doors permanently**. In 2012, state lawmakers passed a bill requiring abortion providers to have admitting privileges at a local hospital in order to remain open; as Mother Jones reports, other restrictive anti-abortion bills had already forced several clinics in the state to close down. Had the admitting privileges law been allowed to take effect immediately, Mississippi's one remaining clinic would have been forced to close down. Thus**, a federal judge blocked implementation of the law while its constitutionality was determined, and the state's sole abortion provider tried and failed to obtain admitting privileges at the seven hospitals at which it was eligible**. **Admitting privileges are not medically necessary**; they're a tactic used by conservative lawmakers to close down abortion providers. **Such Targeted Regulation of Abortion Providers** (TRAP) laws have successfully shuttered clinics across the country, putting a huge and undue burden on women who wish to terminate unwanted pregnancies. Had this measure succeeded, Mississippi would have been the first state post-Roe v. **Wade without a single abortion facility**. Thankfully, that didn't happen: the United States Court of Appeals for the Fifth Circuit — despite its reputation of sucking, big time — **ruled 2 to 1 that Mississippi being like**, "Ugh, ooookkaaay, women can't get abortions here, as is their constitutional right, but they can totally go to Alabama or something if they want!!!!" is not acceptable and blocked the law from taking effect. Per **the court's ruling: Mississippi may not shift its obligation to respect the established constitutional rights of its citizens to another state**. **Such a proposal would not only place an undue burden on the exercise of the constitutional right, but would also disregard a state's obligation under the principle of federalism—applicable to all fifty states—to accept the burden of the non-delegable duty of protecting the established federal constitutional rights of its own citizens.** In a news release, Nancy Northup, president and CEO of the Center for Reproductive rights, said: "Today's ruling ensures women who have decided to end a pregnancy will continue, for now, to have access to safe, legal care in their home state." For now.

Federal-state cooperation high now—transportation legislation proves

Smart Energy Universe

(7-11-14, “Committee Passes Bills on Federal-State Partnership in Regulation of Nation’s Waters”, http://www.smartenergyuniverse.com/category-blog/alternative-renewable-category-blog-layout/item/7380-committee-passes-bills-on-federal-state-partnership-in-regulation-of-nation-s-waters, July 11 2014) Akshay Bapat

The Committee on Transportation and Infrastructure approved several bills related to the regulation of the Nation’s waters. **The following measures were approved during the markup**: The Waters of the United States Regulatory Overreach Protection Act of 2014 (H.R. 5078), introduced by U.S. Rep. Steve Southerland (**R-FL**), **is bipartisan legislation to uphold the federal-state partnership in regulating the Nation’s waters and prohibit the Environmental Protection Agency and the Army Corps of Engineers from implementing a rule that broadens the scope of the Clean Water Act and expands the federal government’s regulatory power**. “I am pleased the Committee has acted in a bipartisan fashion to recognize the role that states must play in regulating waters within their respective boundaries,” Southerland said. “By turning back the administration’s brazen power grab, **we’ve stood in defense of a federal-state partnership that has worked for 40 years**. As a result, we’ve taken the first step in restoring certainty for the farmers, manufacturers, and construction and transportation industries driving economic growth.” The Regulatory Certainty Act (H.R. 4854), introduced by Water Resources and Environment Subcommittee Chairman Bob Gibbs (**R-OH**), defines the exact period of time the Environmental Protection Agency is allowed to restrict or deny a Clean Water Act dredge and fill (wetlands) permit under Section 404(c), and clarifies that the EPA does not have the authority to disapprove or revoke such a permit before the Army Corps of Engineers has completed its review of a permit application or after the

Corps of Engineers has issued the permit. “I am pleased that the Regulatory Certainty Act of 2014 was voted out of committee,” said Gibbs. “This bipartisan bill will make common sense reforms to the environmental review process by clarifying the EPA’s veto authority under section 404(c) of the Clean Water Act and ensuring that the EPA does not kill a project without just cause. The EPA should not be denying permits before they are ever even applied for, or revoking permits without a violation. This bill ensures that the environment is protected, businesses have certainty, and more jobs can be created.” Bipartisan legislation to uphold the federal-state partnership to regulate the Nation’s waters and prohibit the EPA and the Army Corps of Engineers from implementing a rule that broadens the scope of the Clean Water Act and expands the federal government’s regulatory power was introduced in the House by Transportation and Infrastructure Committee leaders. The Waters of the United States Regulatory Overreach Protection Act (H.R. 5078) is sponsored by Rep. Steve Southerland, and is cosponsored by Transportation Committee Chairman Bill Shuster (**R-PA**), Water Resources and Environment Subcommittee Chairman Bob Gibbs (**R-OH**), and a bipartisan group of additional Members of the House. **“This bipartisan legislation provides a safeguard against the federal government’s overreach into regulatory decisions best made by officials at the state and local levels,” Southerland said**. “By getting Washington out of the way, we’re also providing our farmers, manufacturers, transportation builders, and construction industries with the certainty they need to grow America’s economy, free from the regulatory burden of D.C. bureaucrats.” “Regulation of the Nation’s waters must be done in a manner that responsibly protects the environment, **without an unnecessary and costly expansion of the federal government,” Shuster said**. “This bill ensures that we can continue to protect our waters without unreasonable and burdensome regulations on our businesses, farmers, and families.” “During committee hearings held on this issue many stakeholders expressed their concerns about the tremendous uncertainty this rule would bring,” Gibbs said. “It has also been made clear the rule would have sweeping economic and regulatory implications for the entire Nation and undermine the ability of states and local governments to make decisions about their lands and waters. This legislation will ensure that our Nation’s waters are regulated responsibly by preserving the role of the states in administering the Clean Water Act.” For more than four decades, **regulation of pollution and water quality for the Nation’s waters has been achieved through a productive partnership between state governments and the federal government**. This relationship, established under the Clean Water Act (CWA), has been successful because of the recognition that not all waters need to be subject to federal jurisdiction and that states should have the primary responsibility of regulating waters within their individual boundaries. This partnership has led to significantly less pollution and cleaner water for the country. **However**, the Obama Administration and some lawmakers in recent years have sought to “clarify” the scope of federal jurisdiction under the CWA in a manner that would upset this balanced regulatory approach and expand the federal government’s power. Changing the scope of the CWA is solely the responsibility of Congress, and Congress has determined this to be unnecessary. Efforts to significantly expand federal jurisdiction was the subject of failed legislation in the 110thand 111th Congresses. **Now**, through a new rule proposed in April, the Obama Administration has sought to bypass the legislative process and achieve the same expansionist agenda through agency guidance and the executive branch’s regulatory process. The Waters of the United States Regulatory Overreach Protection Act: The Waters of the United States Regulatory Overreach Protection Act will uphold the federal-state partnership to regulate the Nation’s waters by preserving existing rights and responsibilities with respect to “waters of the United States” under the Clean Water Act. The bill prohibits the Environmental Protection Agency and the Army Corps of Engineers from developing, finalizing, adopting, implementing, applying, administering, or enforcing: The proposed rule that would redefine “waters of the United States” under the CWA, **or using the rule as a basis for future administrative actions that would undermine the federal-state partnership or usurp Congress’ express authority to change the scope of the Clean Water Act through a redefinition of “waters of the United States.” Any agency guidance that would expand the scope of waters covered by the CWA**, as the Administration’s proposed WOTUS rule and draft guidance would do. The agencies’ interpretive rule that would broaden regulation of the agricultural community by restricting the exemption from CWA Section 404 permitting for certain agricultural conservation practices. The bill also requires the EPA and the Corps to engage in a federalism consultation with the states and local governments by: Jointly consulting with relevant state and local officials to formulate recommendations for a consensus regulatory proposal that would identify the scope of waters to be covered under the Clean Water Act, and those waters to be reserved for the states to determine how to regulate. The proposal would need to be consistent with the applicable rulings of the United States Supreme Court. **Preparing a draft report describing the recommendations for a consensus regulatory proposal developed as a result of the consultation with relevant state and local officials**, **and publish the draft report in the Federal Register for public review and comment**. Preparing and submitting to Congress a final report describing the recommendations for a consensus regulatory proposal, **based on the consultation with relevant state and local officials and the public review of the draft report**. **The Coal Jobs Protection Act of 2014** (H.R. 5077), introduced by Rep. Shelley Moore Capito (**R-WV**), **preserves the authority of each state to make determinations relating to the state’s water quality management program**, and restricts the EPA’s ability to second-guess or delay a state’s permitting and water quality standards decisions. “Five thousand fewer West Virginians are employed as coal miners compared to two years ago, and this administration’s policies and the EPA’s regulatory assault on the coal industry account for most of these job losses,” Capito said. “The Coal Jobs Protection Act is a critical step in fighting back against this administration’s anti-coal policies and holding the EPA accountable for the consequences of their actions. No longer will the EPA be able to drag its feet in making permitting decisions or avoid holding public hearings on new regulations. **By restoring authority to state governments**, we will ensure that economic and environmental needs of communities are addressed by the people who know these concerns the best – the people who live there – not by Washington bureaucrats. I will continue to bring the voice of West Virginia workers and families to Washington as I fight for policies that grow our economy and create jobs.” The Committee also approved 27 General Services Administration Capital Investment and

Leasing Program resolutions that will result in $914 million in taxpayer savings through space reductions, space consolidations, and avoided lease costs. Furthermore, the Committee passed H. Con. Res. 103, authorizing the use of the Capitol Grounds for the District of Columbia Special Olympics Law Enforcement Torch Run; and H.R. 3044 – to approve the transfer of Yellow Creek Port properties in Iuka, Mississippi.

Uniq: States ctrl NRG Now

Increasing states control over electricity sector now

Hari M. **Osofsky &** Hannah J. **Wiseman. 2013.** Hari M. Osofsky is an Associate Professor & 2011 Lampert Fesler Research Fellow, University of Minnesota Law School; Associate Director of Law, Geography & Environment, Consortium on Law and Values in Health, Environment & the Life Sciences; Affiliated Faculty, Geography & Conservation Biology; Fellow, Institute on the Environment. Hannah J. Wiseman is an Assistant Professor at the Florida State University College of Law. "Dynamic Energy Federalism". http://ssrn.com/abstract=2138127 // GD

C. Regulatory The combination of physical and market challenges highlighted in Sections I.A and I.B combine to create daunting regulatory challenges in an energy system which needs more flexibility in generation and access to 24 transmission, more consumer options, and, as always, a continuous and adequate supply of electricity. These **challenges largely fall to federal and local entities, which often are not fully equipped with the jurisdictional reach or the governance capacity to fully address them**: **Although energy resources are distributed unequally around the world, and markets for them are increasingly transnational, these resources are primarily regulated at a national or subnational level due to the international law principle of state sovereignty over natural resources.** This principle both gives the United States property rights to and control over its land-based and off-shore energy resources and makes it dependent on the other countries with energy resources that it needs.100 Within the United States, **a number of local, regional, federal, and state regulations, standards, and quasi-formal governance schemes shape both the physical structure of America's energy system and intervene in the market forces described above.** These public controls also provide unique market opportunities, such as the construction of new transmission lines and the addition of smart grid technologies, which can enable new generation sources to connect to the grid and empower consumers to influence the type, quantity, and price of electricity they consume.101 25 **Local and state governments have broad control over the choice of fuel used to produce electricity and the type of generation facilities constructed. Increasingly, cities102 and states write renewable portfolio standards103 that require a certain percentage of electricity to come from renewable sources, for example.** These force utilities, over time, to switch generation sources even if they have to abandon beneficial long-term contracts with fossil fuel based generators.104 Local and **state governments also affect the type of generation chosen through their regulation of utility rates or through direct mandates for generation**. City councils sometimes direct municipally owned utilities, for example, to build new renewable generation, whereas states that regulate utility rates tend to only approve affordable construction projects that keep rates down.105 Through renewable portfolio standards and other decisions about the energy generation mix, **state and local governments directly or indirectly require the construction of new transmission to connect renewable generation to the utilities that must purchase it.** Texas has gone the furthest in this regard, requiring its Public Utility Commission to select utilities to build high-priority transmission lines to wind generation built under the state's renewable portfolio standard.106

Uniq: Coop Fism Now (NRG)

Cooperative federalism solving electricity sector now

Hari M. **Osofsky &** Hannah J. **Wiseman. 2013.** Hari M. Osofsky is an Associate Professor & 2011 Lampert Fesler Research Fellow, University of Minnesota Law School; Associate Director of Law, Geography & Environment, Consortium on Law and Values in Health, Environment & the Life Sciences; Affiliated Faculty, Geography & Conservation Biology; Fellow, Institute on the Environment. Hannah J. Wiseman is an Assistant Professor at the Florida State University College of Law. "Dynamic Energy Federalism". http://ssrn.com/abstract=2138127 // GD

Energy governance approaches also vary in the extent to which they encourage or rely upon cooperativeness. There are many examples of cooperative federalism along both the vertical and horizontal axes. For instance, states **are trying to work together in the electricity context through** 52 **MISO's** Multi-Value Project (**MVP**) introduced above, which will provide expanded transmission to allow more generation to connect to the grid **while** also **connecting regional benefits to costs in order to ensure fair cost sharing.2**15 **The states governed by MISO,** through their Organization of MISO States described above, a**lso cooperate regularly to intervene in FERC proceedings**—often shifting among positions that support a Midwest ISO policy or filing, oppose it, or follow a middle ground.216 **Focusing on only cooperative federalism,** however, **would miss the many critical uncooperative dynamics that help to structure interactions along both axes and resulting governance approache**s. On the vertical axis, **for example, lawsuits filed by states opposing FERC's federal imposition of transmission siting authority made FERC restart its national interest electric transmission corridor designation process**. In a case brought by the Minnesota Public Utilities Commission and environmental groups,217 for example, the Fourth Circuit held that if a state commission denies a transmission siting application, this does not give FERC federal authority to select an appropriate site.218 As with directional hierarchy, interactions among entities often vary in how cooperative and conflictual they are over time. Ann Carlson has explained in the environmental context that **these iterative interactions can help to foster needed regulation over time**.219 These types of interactions also occur throughout energy law. The Delaware River Basin Commission's governance of natural gas well development, discussed in depth in Hybrid Energy Governance, exemplifies these shifting relationships within a regional institution. The state members and single federal representative on this Commission initially cooperated to draft a comprehensive set of regulations governing the location of well sites, controlling erosion from sites, requiring extensive surface and subsurface water testing prior to drilling and fracturing, and imposing a number of 53 other constraints on the gas extraction process.220 The process temporarily broke down, however, when individual state members began to question the adequacy of the process (with New York demanding an environmental impact statement under the National Environmental Policy Act in federal court221) and the substance of the regulations (with Delaware's governor asserting that he would not vote for the regulations, which he viewed as insufficiently protective of the environment222). Based on these state concerns, the DRBC has delayed finalizing its rules and has continued to hold hearings and respond to public comments in an attempt to reach a constructive compromise.223

Links

1NC/2NC Oceans Link

B. Federal Action without prior state consultation GUTS the current federal model in ocean policy – oil and gas issues prove

Ocean Commission 2k4

(U.S. C OMMISSION ON O CEAN P OLICY M EMBERS AND A FFILIATIONS Chairman Admiral James D. Watkins, USN (Ret.) Chairman and President Emeritus Consortium for Oceanographic Research and Education Washington, D.C. Robert Ballard, Ph.D. Professor of Oceanography Graduate School of Oceanography University of Rhode Island Ted A. Beattie President and Chief Executive Officer John G. Shedd Aquarium, Illinois Lillian Borrone Former Assistant Executive Director Port Authority of New York and New Jersey James M. Coleman, Ph.D. Boyd Professor, Coastal Studies Institute Louisiana State University Ann D'Amato Chief of Staff, Office of the City Attorney Los Angeles, California Lawrence Dickerson President and Chief Operating Officer Diamond Offshore Drilling, Inc., Texas Vice Admiral Paul G. Gaffney II, USN (Ret.) President Monmouth University, New Jersey Marc J. Hershman Professor, School of Marine Affairs University of Washington Paul L. Kelly Senior Vice President Rowan Companies, Inc., Texas Christopher Koch President and Chief Executive Officer World Shipping Council, Washington, D.C. Frank Muller-Karger, Ph.D. Professor, College of Marine Science University of South Florida Edward B. Rasmuson Chairman of the Board of Directors Wells Fargo Bank, Alaska Andrew A. Rosenberg, Ph.D. Professor, Department of Natural Resources and the Institute for the Study of Earth, Oceans, and Space University of New Hampshire William D. Ruckelshaus Strategic Director Madrona Venture Group, Washington Paul A. Sandifer, Ph.D. Senior Scientist National Oceanic and Atmospheric Administration South Carolina, pg online @ http://govinfo.library.unt.edu/oceancommission/documents/pre_pub_fin_report.pdf //um-ef)

In the area of natural resource management, **one of the more interesting, innovative, and sometimes contentious features of the nation's system of federalism is the relationship between the federal government and coastal state governments with respect to the control and shaping of ocean activities in federal waters.** Historically, this relationship has taken on many hues and forms, but **its policy and legal aspects have been largely structured** over the last three decades **by the development of one section of a single law, the** so-called federal consistency provision (Section 307 of the Coastal Zone Management Act (**CZMA**)). As noted earlier in this chapter, **the promise of federal consistency was one of two incentives** (the other being grant money) **Congress provided to encourage state participation in this voluntary program**. In very general terms, **it is a promise that federal government actions that are reasonably likely to affect the coastal resources of a state with an approved co astal management program will be consistent with the enforceabl e policies of that program**. Under some circumstances, **it is a limited waiver of federal authority in an area—offshore waters seaward of state submerged lands—in which the federal government othe rwise exercises full jurisdiction over the management of living and nonliving resources.** The underlying principle of **federal consistency represents a key feature of cooperative federalism**: **the need for federal agencies to adequately consider state coastal management programs by fostering early consultation, cooperation, and coordination before taking an action that is likely to affect th e land or water use or natural resources of such state's coasta l zone. It facilitates significant input at the state** and local **level from those who are closest to the issue and in a position t o know the most about their coastal resources**. The process, however, is not one-sided. For states to exercise federal consistency authority, they must submit and receive approval of their coastal management programs from the Secretary of Commerce. Congress established the general criteria for approval of the programs, including a review by other fe deral agencies before the plans are officially authorized. A core criterion for program approval is whether the management program adequately considers the national interest when planning for and managing the coastal zone, including the siting of facilities (such as energy facilities) that are of greater than local significance. Once a state has received approval, federal consistency procedures are triggered. Under current practice, states only review federal actions that have reasonably fore seeable coastal effects. There is flexibilit y in the law to allow agreements between states and federal agencies that can streamline many aspe cts of program implementation. For example, there may be understandings with respect to classes of activities that do not have coastal effects. Otherwise, the decisions about such effects are made on a case-by-case basis. **There have been disagreements between federal agencies and states on some coastal issues, the more high profile ones largely in the area of offshore oil and gas development.** (For a further discussion of this issue, see Chapter 24.) **Nevertheless, in general, the federal consistency**

coordination process has improved federal-state relationships in ocean management. States and local governments have to consider national interests while making their coastal management decisions and **federal agencies are directed to adjust their d ecision making to address the enforceable policies of a state's coastal management program. In the event of a disagreement between the state and a federal agency, the agency may proceed with its activity over the state's objection, but it must show that it is meeting a certain level of consistency**. In a separate part of the federal consistency section, the coastal activities of third party a pplicants for federal licenses or permits are required to be consistent with the state's program. If the state does not certify th at the activities will be consistent, the federal agency shall not grant the license or permit and the proposed action may not go forward. An applicant can appeal such a decision to the Secretary of Commerce, who has certain specified ground s on which he or she can overturn the state's finding of inconsistency. Today, after some thirty years of evolution in the practice and implementation of this rather unusual intergovernmental process**, federal agencies do not take the consistency standard lightly,** as it is a fairly high threshold to meet. **The result, according to N**ational **O**ceanic and **A**tmospheric **A**dministration, **has been an outstanding level of cooperation and negotiation between states and federal agencies** 15 such that approximately 93-95 percent of the activities are approved.

1NC/2NC Energy Link

Energy policy is the key federalism dispute

Ofosky 12
[Hari M. Osofsky is an Associate Professor & 2011 Lampert Fesler Research Fellow, University of Minnesota Law School. Hannah J. Wiseman is an Assistant Professor at the Florida State University College of Law. "Dynamic Energy Federalism". Minnesota Legal Studies Research Paper No. 12-44 . http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2138127&download=yes]

II. FEDERALISM CHALLENGES TO ENERGY TRANSFORMATION The production and movement of **energy presents one of the greatest governance challenges of our time. The** physical **processes that underlie much of our modern energy system**—including electricity generation, transportation, and distribution9—**are necessary to sustain human life** as we know it and yet are unusually complex and difficult to manage. **Because energy is at the core of every human necessity**, from enabling the provision of food, shelter, and clothing to driving economic growth and essential interpersonal communications, **it is inextricably intertwined with fundamental societal values of fairness, justice, economic opportunity, and environmental protection. As humans demand energy transformation in the form of cleaner**, more affordable, **and more accessible energy, and as technology introduces new opportunities** into an already complex system, **these developments run up against the boundaries of traditional governance structures and call for rapid regulatory innovation**. **This innovation**, in turn, **requires new theoretical approaches to governance, and particularly to federalism—the guiding force behind decisions about interactions of governmental and nongovernmental actors across levels of government.**
This Part provides three maps of energy governance and its challenges. First, it delineates the complex grid of physical, market, and regulatory interactions that comprise the current U.S. energy system. Next, it **brings together energy federalism with dynamic federalism to introduce a model of the spatial and cross-cutting dynamics that this complex grid produces**. Finally, it analyzes four energy-specific governance challenges that add an additional layer of complexity to this map. These factors, which are unique to energy due to its tripartite structure, interact with already complex federalist dimensions to further concentrate barriers to effective and dynamic governance.

Links: Small Decisions

Small decisions are the greatest threat to federalism

Lebow ‘97
(Cynthia, associate Director @ Rand, Univ Tennessee Law Review, 1997, spring, pg lexis)
See Southland, 465 U.S. at 21 (O'Connor, J., dissenting) (noting Rehnquist, C.J., joining opinion of O'Connor, J.); FERC, 456 U.S. at 775 (O'Connor, J., concurring in part and dissenting in part) (noting Rehnquist, C.J., joining in opinion of O'Connor, J.). Justice Powell filed his own partial dissent in FERC that also deserves mention. FERC, 456 U.S. at 771 (Powell, J., concurring in part and dissenting in part). Lauding the "appeal" and "wisdom" of Justice O'Connor's dissent, Powell stated that PURPA "intrusively requires [states] to make a place on their administrative agenda for consideration and potential adoption of federally proposed standards.'" Id. at 771, 775 (Powell, J., concurring in part and dissenting in part). While finding that precedents of the Court supported the constitutionality of the substantive provisions of PURPA "on this facial attack," Powell also evoked principles of federalism to warn against the encroachment of federal authority into state affairs: But I know of no other attempt by the Federal Government to supplant state-prescribed procedures that in part define the nature of their administrative agencies. If Congress may do this, presumably it has the power to pre-empt state-court rules of civil procedure and judicial review in classes of cases found to affect commerce. This would be the type of gradual encroachment hypothesized by Professor Tribe: **"Of course, no one expects Congress to obliterate the states, at least in one fell swoop. If there is any danger, it lies in the tyranny of small decisions in the prospect that Congress will nibble away at state sovereignty, bit by bit, until someday essentially nothing is left but a gutted shell."** Id. at 774-75 (Powell, J., concurring in part and dissenting in part) (quoting Laurence H. Tribe, American Constitutional Law 302 (1978)). Despite his warning, Justice Powell could probably never have envisioned the degree to which Congress would attempt to preempt state court procedures with respect to tort and product liability actions, areas so traditionally anchored in state common law.

Links: Drilling of Natural Gas or Oil

The federal government can frack whenever—hurts federalism

Spence 13 [David Spence is Professor of Law, Politics & Regulation, University of Texas at Austin. Professor Spence wishes to thank participants in the Northwestern University Law School's Searle Center 2012 Conference on Federalism and Energy in the United States for their insightful comments on an earlier draft of this Article and Andrew Dittmar for his research assistance during the preparation of this Article. "FEDERALISM, REGULATORY LAGS, AND THE POLITICAL ECONOMY OF ENERGY PRODUCTION" January 2013 Lexis] JAKE LEE

A careful examination of Table 4 reveals that **the federal government regulates fracking, like other onshore oil and gas operations**, relatively lightly. There is **no federal licensing requirement for fracking operations and few other federal approvals are required as part of a fracking operation**. Federal regulation may be triggered if the fr**acking operation risks harm to an endangered species**, n216 will result in a discharge to surface waters n217 or a [*478] pretreatment facility, n218 or **will result in underground injection of wastewater for disposal**. n219 **The transport of hazardous chemicals requires compliance with Hazardous Materials Transportation Act's labeling and manifest requirements.** n220 **However, it is not uncommon for fracking operations to avoid regulation under many of these provisions. n221 Critically, if the operation requires no federal approvals, then it will not trigger ancillary federal regulations, such as the requirement to obtain certification from the state under the CWA n222 or undertake an environmental review under the NEPA. n223¶ On the other hand, fracking is subject to a growing and varied list of state regulatory requirements.** n224 Given the ongoing controversy over the sufficiency of existing regulation, is there a case for comprehensive federal regulation of fracking operations? **Turning once again to the rationales for federal regulation developed in Section III.A, we might ask how persuasively each rationale applies to the case of fracking, while keeping in mind the influence of politics in the regulatory process. The next section will explore those questions. n225**

Links: Energy

Federal Government regulates any energy project—no state action which hurts federalism

Spence 13
[David Spence is Professor of Law, Politics & Regulation, University of Texas at Austin. Professor Spence wishes to thank participants in the Northwestern University Law School's Searle Center 2012 Conference on Federalism and Energy in the United States for their insightful comments on an earlier draft of this Article and Andrew Dittmar for his research assistance during the preparation of this Article. "FEDERALISM, REGULATORY LAGS, AND THE POLITICAL ECONOMY OF ENERGY PRODUCTION" January 2013 Lexis] JAKE LEE
Most federal energy-permitting and regulatory regimes are justified by some combination of the first, second, and fourth logical rationales described [*469] in the previous Section, though many of these regimes apply to a variety of industries, **of which energy is just one. Some energy facilities are subject to a variety of risk-based regulations that focus not on a particular industry, but on controlling interstate/spillover externalities,** like air or water pollution, **or preventing a race to the bottom across a variety of industries** (including energy). These types of regulatory regimes are the product of republican moments, driven by public concern over the risks at issue. n176 **Coal-fired power plants and oil refineries, for example, are subject to risk-based regulation by a variety of federal agencies under several federal statutes, each focused on managing a particular set of environmental, health, and safety risks.** Thus, new or modified coal-fired power plants and oil refineries must obtain air and water discharge permits under **the Clean Air Act n177 and Clean Water Act, n178 respectively. n179 Because air and surface-water pollution cross state boundaries, n180 federal regulation makes sense; similarly, federal regulators have stopped short of regulating entirely intrastate water pollution for the most part**. n181 At the same time, coal-fired power plants must comply with OSHA worker-protection regulations n182 and hazardous waste [*470] management requirements under RCRA n183 that may involve relatively few interstate impacts, but which might be justified on race-to-the-bottom grounds. **That is, in the absence of federal regulation of these risks, one might imagine states competing for mobile capital investment** (and resulting jobs and economic development) by lowering their regulatory standards. n184¶ **Many of these risk-based regulatory regimes address federalism issues head-on by employing a system of "cooper-ative federalism,"** n185 under which federal agencies establish national standards n186 and permitting requirements, **but delegate to the states the authority to administer regulatory programs, n187 including the authority to issue or deny per-mits. n188** This structure may reserve for the states the authority to impose more stringent requirements than those found in the federal standards; in **those cases, the federal standards act [*471] as a regulatory minimum to which states can choose to add. n189 Some of these risk-regulation regimes limit regulators' ability to balance environmental, health, and safety concerns against economic or energy security concerns**. For example, OSHA and EPA regulators may not consider costs when establishing air pollution standards for the ambient air or for workplaces, respectively. n190 Thus, for coal-fired power plants and oil refineries, no single regulator is charged with comprehensively examining the environ-mental, health, and safety risks associated with a facility. **Moreover, federal regulatory responsibility for these facilities is diffuse in that each regulator focuses on only one aspect of an energy facility's operations, such as workplace safety or air emissions**. n191¶ Other energy facilities are subject to regulations focused not on specific risks but on the energy industry itself**. For these facilities, Congress has decided that it is in the national interest to center most environmental, health, and safety reviews in unified federal licensing processes administered by lead federal agencies.** Often, this allocation of power is the product of a congressional decision that the national interest requires development of a particular kind of energy. Examples of this kind of approach include the licensing processes for hydroelectric facilities under the Federal Power Act, n192 nuclear power plants under the Atomic Energy Act, n193 liquefied [*472] **natural gas terminals under both the Natural Gas Act n194 and the Deepwater Ports Act, n195 surface mining of coal under the Surface**

Mining Control and Reclamation Act (SMCRA), n196 and offshore oil and gas production under the Outer Continental Shelf Lands Act (OCSLA). n197 Under these types of regimes, Congress tends to grant the federal licensing agency wide latitude to balance economic and energy security concerns against environmental, health, and safety risks. For example, the Atomic Energy Act authorized the NRC (formerly known as the Atomic Energy Commission) to grant or deny licenses for nuclear power plants in accordance with such procedures and "subject to such conditions as ... [it] **may by rule or regulation establish." n198 Similarly, the Natural Gas Act authorizes the FERC to approve onshore LNG facilities "upon such terms and conditions as the Commission may find necessary or appropriate ... ." n199 Compared to risk-based regulatory regimes, it is more common for comprehensive federal licensing regimes to preempt state and local regulation under the Supremacy Clause**. n200 Thus, for example, the Supreme Court has determined that the Federal Power Act preempts most state and local regulation of hydro-electric power facilities under the Supremacy Clause. n201 Likewise, the Atomic [*473] **Energy Act impliedly preempts state and local regulation of radiation hazards, n202 and the Natural Gas Act expressly preempts local law when it comes to siting natural gas facilities, including LNG terminals**. n203¶ However, while comprehensive licensing statutes grant wide latitude to federal regulatory agencies, and often preempt local law, this does not mean that states have no influence in these licensing processes. In fact, most compre-hensive federal licensing statutes require a federal licensing agency to consider state concerns in the licensing process. **This is true** of **the offshore oil and gas leasing process under the OCSLA,** n204 the nuclear power plant-licensing process under the Atomic Energy Act, n205 and the hydroelectric licensing process under the Federal Power Act. n206 Moreover, states can often exert independent leverage in the licensing process through authority delegated to the state under other federal laws. For example, the CWA requires that federally approved projects that "may result in any discharge into ... navigable waters" secure a certification from the applicable state that the discharge will comply with the Act's water quality-protection requirements. n207 Many energy facilities are subject to this provision. n208 [*474] **Similarly, if a proposed energy project may affect the coastal zone of a state with an approved coastal zone management plan under the Coastal Zone Management Act (CZMA), the federal agency with jurisdiction must make a determination that the proposed project is consistent with the state's coastal zone management plan before moving forward**. n209 This kind of leverage through federal law is limited, however. When federal law grants states real leverage over an energy project, that authority is usually narrow. For example, **states cannot use their authority to issue or deny certification under the CWA to oppose a hydroelectric project based on aesthetic or neighborhood character issues, because the certification process** is limited to protecting water quality. n210 Similarly, the CZMA does not give the final word to the states whose coastal zone is affected. In the event a state disagrees with a federal agency's determination of a proposed energy project's consistency with the state's coastal zone management plan, **the final decision rests not with the state but with the Secretary of Commerce. n211¶ Table 4 below summarizes the kinds of federal licensing and permitting regimes that apply to various types of en-ergy facilities and the routes of state or local influence** over the approval process for each facility. As that summary indicates, some types of energy facilities must overcome more regulatory barriers than others. Nonetheless, most energy facilities are subject to **a wide variety of regulatory regimes designed to regulate environmental, health, and safety risks. All of those regimes can be explained using some combination of the four rationales for federal regulation described in Section III.A.**

Links: Environment Policies

The plan is under the Federal Government— took states power on environment policies— kills federalism

Butler and Harris 14

[Henry N. Butler is a George Mason University Foundation Professor of Law and Executive Director, Law & Economics Center, George Mason University School of Law., Nathanial J. Harris is a George Mason University School of Law, Class of 2013, and Law Clerk to The Honorable Harris L Hartz, United States Court of Appeals for the Tenth Circuit. The authors acknowledge the financial support of the Mercatus Center at George Mason University and the Law & Economics Center at George Mason University School of Law. Helpful and insightful comments from the referees are greatly appreciated. "SUE, SETTLE, AND SHUT OUT THE STATES: DESTROYING THE ENVIRONMENTAL BENEFITS OF COOPERATIVE FEDERALISM" 2014 http://www.law.gmu.edu/assets/files/publications/working_papers/1357.pdf] **JAKE LEE**

Federal environmental policy has long relied on the states to assist in the development ¶ and implementation of environmental regulations.3 Under this "cooperative federalism," states ¶ not only administer federal rules but also receive flexibility in setting standards and enforcement ¶ priorities.4 **In recent years, environmental advocacy groups have increasingly succeeded in using ¶ a faux litigation strategy to effectively** trample the statutory regulatory framework and to shut out ¶ the states from important policy decisions.5 **As explained below, this policy-making process—¶ called "sue-and-settle" or "suit-and-settlement"—not only violates the statutory framework**, but ¶ also leads to haphazard policy making that should violate the standards of any serious policy ¶ analyst. Sue-**and-settle is being used by environmental advocacy groups and federal regulators to ¶ shut the states out of their statutorily created roles**. The **basic scenario of this so-called ¶ institutional reform litigation6 is straightforward. An environmental advocacy group sues a ¶ federal agency, usually the EPA, for failing to adequately police state action under federal ¶ environmental laws**. Specifically, the advocacy group alleges that the EPA has a ¶ nondiscretionary duty to ensure that states establish certain standards and that the agency has ¶ failed to do so. **In many circumstances, the EPA's failure is a failure to act when states ¶ themselves miss deadlines imposed by the varying environmental statutes.7 After the state fails,** ¶ various statutes require the **EPA to impose a federal implementation plan (FIP) that states must ¶ follow**.8 At other times though, and a major point of this paper, it is the EPA's failings—¶ completely independent of the states—that leads to a consent decree.9 **The EPA and the advocacy group then settle the lawsuit—without any input from the states that were responsible ¶ in the first place and are now responsible for implementing the terms of the settlement. In the ¶ settlement agreement, the EPA is required to implement its own standard if the states fail to ¶ develop a standard by a deadline imposed by the settlement**. The standard, or at least the nature ¶ of the standard, is also frequently established by the settlement agreement. **The settlement is then ¶ entered as a consent decree10 and the EPA is bound by the terms under court order. After the ¶ consent decree is entered, the EPA issues an FIP because the states were unable to meet the ¶ settlement's deadlines, standards, or both. Just like that, states—statutorily charged with ¶ implementing pollution controls themselves—are circumvented and the EPA takes over and ¶ imposes FIPs.** ¶ Paradoxically, the EPA's "surrendering" of its discretionary authority to work ¶ cooperatively with the states leads to more, not less, control at the federal level. Thus, as a result ¶ of being sued, the agency actually has more power relative to the states. Instead of allowing the ¶ states the flexibility to continually experiment with different approaches, standards, ¶ implementation plans, and so forth, the settlement agreements between the advocacy group and ¶ the EPA increase direct EPA control over the states. Of course, the advocacy groups that bring ¶ these suits are generally pleased with the result. **The fact that both parties get what they want as a ¶ result of the filing of the lawsuit should raise some suspicion about what is actually going on.** ¶ Consider the case of Defenders of Wildlife v. Perciasepe.11 On November 8, 2010, two events ¶ occurred: (1) Defenders of Wildlife filed its complaint against EPA; and (2) EPA and Defenders ¶ of Wildlife filed a consent decree and a joint motion to enter the consent decree with the court. ¶ Although simultaneously **filing a lawsuit and a consent decree do not necessarily imply foul ¶**

play, it does illustrate how little impact states may have in the consent decree process that may ¶ ultimately dictate what and when a state is required to do by statute

Federal government use a policy called sue and settle—jacks Federalism
Butler and Harris 14
[Henry N. Butler is a George Mason University Foundation Professor of Law and Executive Director, Law & Economics Center, George Mason University School of Law., Nathanial J. Harris is a George Mason University School of Law, Class of 2013, and Law Clerk to The Honorable Harris L Hartz, United States Court of Appeals for the Tenth Circuit. The authors acknowledge the financial support of the Mercatus Center at George Mason University and the Law & Economics Center at George Mason University School of Law. Helpful and insightful comments from the referees are greatly appreciated. "SUE, SETTLE, AND SHUT OUT THE STATES: DESTROYING THE ENVIRONMENTAL BENEFITS OF COOPERATIVE FEDERALISM" 2014 http://www.law.gmu.edu/assets/files/publications/working_papers/1357.pdf] JAKE LEE
A major problem with the current use of sue-and-settle in the environmental context is ¶ that consent decrees undermine those aspects of U.S. environmental law that support federalism ¶ and the rational allocation of regulatory authority consistent with the matching principle. **First, ¶ sue-and-settle consent decrees are used to circumvent statutorily created state roles in federal ¶ environmental policy. Second and more central, sue-and-settle consent decrees eliminate state ¶ involvement in the normal regulatory notice-and-comment process. Supporters of sue-and-settle ¶ contend that the doctrines of intervenor, modification, and the ability to challenge final rules ¶ through the APA, serve as sufficient substitutes to ordinary notice-and-comment rulemaking.185 ¶ This is not true in practice.**

Sue and Settle is preventing states action on environment policies—hurts federalism

Butler and Harris 14 [Henry N. Butler is a George Mason University Foundation Professor of Law and Executive Director, Law & Economics Center, George Mason University School of Law., Nathanial J. Harris is a George Mason University School of Law, Class of 2013, and Law Clerk to The Honorable Harris L Hartz, United States Court of Appeals for the Tenth Circuit. The authors acknowledge the financial support of the Mercatus Center at George Mason University and the Law & Economics Center at George Mason University School of Law. Helpful and insightful comments from the referees are greatly appreciated. "SUE, SETTLE, AND SHUT OUT THE STATES: DESTROYING THE ENVIRONMENTAL BENEFITS OF COOPERATIVE FEDERALISM" 2014 http://www.law.gmu.edu/assets/files/publications/working_papers/1357.pdf] JAKE LEE
Sue-and-settle consent decrees are being used in institutional reform cases to drastically ¶ modify the environmental policy landscape. Though many parties may be negatively affected by ¶ this trend, the harms to states and state authority are the most problematic. **Environmental policy ¶ is most efficient and effective when it is governed by the matching principle, i.e., when the ¶ authority for environmental regulation is matched to the party that is harmed**. Despite the fact ¶ that the United States does not strictly adhere to the matching principle, **it recognizes the ¶ importance of state involvement in environmental regulatory policy**. This includes granting both ¶ decision-making and enforcement authority to **the states under key environmental statutes such ¶ as the CAA and CWA. The structure of federal regulatory law also includes notice-and-comment procedures for federal rulemaking, where the state is allowed to participate in the federal ¶ agencies' decisions. Unfortunately, institutional reform consent decrees have severely limited the ¶ states' roles in environmental policy. Sue-and-settle erodes both statutory enforcement authority ¶ and the states' ability to participate in notice-and-comment rulemaking**

Sue and Settle prevents any state action—hurts Federalism

Butler and Harris 14 [Henry N. Butler is a George Mason University Foundation Professor of Law and Executive Director, Law & Economics Center, George Mason University School of Law., Nathanial J. Harris is a George Mason University School of Law, Class of 2013, and Law Clerk to The Honorable Harris L Hartz, United States Court of Appeals for the Tenth Circuit. The authors acknowledge the financial support of the Mercatus Center at George Mason University and the Law & Economics Center at George Mason University School of Law. Helpful and insightful comments from the referees are greatly appreciated. "SUE, SETTLE, AND SHUT OUT THE STATES: DESTROYING THE ENVIRONMENTAL BENEFITS OF COOPERATIVE FEDERALISM" 2014 http://www.law.gmu.edu/assets/files/publications/working_papers/1357.pdf] JAKE LEE

Sue-and-settle is also used to prevent states from participating in the rulemaking process ¶ established by the APA.189 Normally, whenever the EPA chooses to implement a new or ¶ amended standard, rule, or deadline, it must proceed through notice-and-comment rulemaking.190 ¶ However, through sue-and-settle consent decrees, the EPA is able to implement new, legally ¶ binding rules and deadlines with the force of law. **Sometimes, consent decrees are able to impose ¶ new deadlines that force the EPA to issue new rules on a truncated time scale, which it would not ¶ have have done so quickly—if at all**. The state benefits from the normal notice-and-comment ¶ rulemaking because it may submit comments, and **the EPA must address the state's concerns by ¶ either implementing the proposed changes or explaining why they are not using them.191 If the EPA proceeds without adequately addressing the comments, the states may sue the EPA under § ¶ 706 of the APA because the EPA acted arbitrarily and capriciously**.192 ¶ The Toxics Consent Decree provides an excellent example of how sue-and-settle has ¶ removed the states' right to participate in standard-setting under the APA. **Recall that in the ¶ original sue-and-settle consent decree, the environmental advocacy groups and the EPA agreed ¶ to set standards for toxic pollutants based on "feasibility" instead of "fully protected public ¶ health**," a standard that the EPA found too onerous to meet.193 **Not only did the consent decree ¶ change the statute, it also changed the standard on which the states could have commented if it ¶ had proceeded to rulemaking.194 The decree limited the grounds on which the states could ¶ change a final rule in court.** Challengers now had to show that the EPA was arbitrary and ¶ capricious in meeting the "feasibility" standard instead of arbitrary and capricious in meeting the ¶ "**fully protected public health" standard. ¶ The American Nurses Association and EPA settlement provides an example where a sue-¶ and-settle consent decree was used to impose unrealistic deadlines that indirectly harmed the ¶ states' interest in participating in federal rulemaking**. Recall that the consent decree required the ¶ EPA to propose new rules for greenhouse gas emissions in less than a year and then to finalize ¶ **the rule in less than eight months after that. States were not directly cut out of the notice-and-¶ comment rulemaking because the EPA still went through the rulemaking process. However, the truncated time frame resulted in each comment receiving less consideration than it normally would**. The EPA received over 20,000 comments for the rulemaking, 500 of which were ¶ technical in nature. It was impossible for the EPA to get through all the comments, give the ¶ states' comments appropriate weight, and implement a high-quality rule.195 In fact, the proposed ¶ **and final rules were full of errors that so concerned the Federal Energy Regulatory Commission ¶ and twenty-five states that they sought to correct the errors after a final rule was imposed.196 ¶ Proponents of sue-and-settle consent decrees and the resulting administrative efficiencies** ¶ argue that harms to states from missing certain rulemaking opportunities are nullified by four ¶ procedural remedies. Specifically, (a**) the federal government announces and receives comments ¶ on a proposed settlement before the consent decree is finalized; (b) states can intervene under ¶ Rule 24 of the F.R.C.P. and assert their interest in the underlying consent decree litigation**; (c) ¶ consent decrees can be modified to remedy problems under Rule 60(b) of the F.R.C.P.; and (d) ¶ **states can sue the**

agency in federal court and challenge the final rule under the APA.197 Though ¶ valid, none of these substitutes remedy the concern that consent decrees remove states and others ¶ with substantial interest in federal regulations from essential determinations.

States cannot intervene in the sue and settle policy—federalism is increased

Butler and Harris 14 [Henry N. Butler is a George Mason University Foundation Professor of Law and Executive Director, Law & Economics Center, George Mason University School of Law., Nathanial J. Harris is a George Mason University School of Law, Class of 2013, and Law Clerk to The Honorable Harris L Hartz, United States Court of Appeals for the Tenth Circuit. The authors acknowledge the financial support of the Mercatus Center at George Mason University and the Law & Economics Center at George Mason University School of Law. Helpful and insightful comments from the referees are greatly appreciated. "SUE, SETTLE, AND SHUT OUT THE STATES: DESTROYING THE ENVIRONMENTAL BENEFITS OF COOPERATIVE FEDERALISM" 2014 http://www.law.gmu.edu/assets/files/publications/working_papers/1357.pdf] JAKE LEE

Intervening under Rule 24 is not an adequate substitute for states seeking to regain rights ¶ lost by consent decrees. Sandler and Schoenbrod explain the likely fate of intervenors: ¶ **People . . . who learn that they may be hurt by a decree often find that the courthouse door is shut in their faces. Intervenors threaten the power of the controlling group** and make it less likely that controversies can be settled by consent. The antipathy of those already in the case means that trying to intervene can be expensive. Many of those harmed by the decree do not even try. **Those that do try often find that their request is denied, typically on the ground that they should have sought admission earlier.205 ¶ Furthermore, judges and existing parties have an interest in preventing intervenors from joining ¶** the suit.206 Judges are likely to deny motions to intervene because **an intervenor signifies a large ¶ obstacle to a case that was about to settle and be removed from the judge's already overcrowded ¶** docket.207 Parties attempting to intervene and block consent decrees are likely able to satisfy the ¶ three elements imposed by Rule 24.208 **However, the overarching requirement of timeliness is a ¶ difficult obstacle for these intervenors to overcome, especially for skeptical judges**. For suits ¶ between federal agencies and environmental advocacy groups, **the federal government does not publish notice of the suit in the Federal Register until it has already settled the case and is ¶ moving to have the settlement entered as a consent decree**.209 At this point, the case is likely very ¶ mature, **having gone through discovery and other onerous litigation processes,210 and a court is ¶ likely to deny the motion to intervene because it would prejudice the other parties that had ¶ already undergone costly tasks.211 On the other hand, as mentioned in the introduction**, ¶ simultaneous filing and settlement suggests the possibility of collusion between the ostensible ¶ adversaries and raises serious concerns about the existence of a real case or controversy. ¶ **Even when the right to intervene is granted, a court is not likely to be sympathetic to a ¶ state intervenor seeking to block a consent decree. In American Nurses Association v. Jackson, ¶ recall that the court had allowed one party to intervene in the action but then rejected all its ¶** attempts to modify the settlement and entered the consent decree.212 The court dismissed the ¶ **intervenor's motion without really considering the validity of the argument, citing the Supreme ¶ Court's holding that "an intervenor is entitled to . . . have its objections heard at the hearings on ¶ whether to approve a consent decree, [but] it does not have power to block the decree merely by ¶ withholding its consent."213**

States cannot challenge the federal government in a sue and settle

Butler and Harris 14 [Henry N. Butler is a George Mason University Foundation Professor of Law and Executive Director, Law & Economics Center, George Mason University School of Law.,

Nathanial J. Harris is a George Mason University School of Law, Class of 2013, and Law Clerk to The Honorable Harris L Hartz, United States Court of Appeals for the Tenth Circuit. The authors acknowledge the financial support of the Mercatus Center at George Mason University and the Law & Economics Center at George Mason University School of Law. Helpful and insightful comments from the referees are greatly appreciated. "SUE, SETTLE, AND SHUT OUT THE STATES: DESTROYING THE ENVIRONMENTAL BENEFITS OF COOPERATIVE FEDERALISM" 2014 http://www.law.gmu.edu/assets/files/publications/working_papers/1357.pdf] JAKE LEE

States are not provided an adequate substitute from the defects of consent decrees merely because they can challenge a final rulemaking that resulted from a consent decree under the APA. First, sometimes consent decrees themselves impose new standards,219 and these standards are completely unalterable under the APA. **Second, a burdensome, arbitrary, and capricious standard coupled with Chevron deference for rulemakings blocks any reasonable expectation that the states will be able to successfully challenge a regulation after it has been implemented.**220 As rationale or justification for any agency action, the agency can always allege that it was merely acting under court order.221 **Furthermore, full litigation is much more costly than participating in normal notice-and-comment rulemaking**. A more costly and likely ineffective suit under the APA is not an adequate substitute for notice-and-comment rulemaking. **Third, subsequent challenges of rules after a consent decree contravene the purposes and benefits of the APA. A consent decree sets the limits and bounds of permissible rules and thereby** limits the field of possibilities **for final rules** to something much narrower than Congress intended.222 In other words, even though the **APA provides a way to challenge the result of a consent decree, the challenge is limited by the confines** of the decree.223 This is problematic because consent decrees are secret rulemakings, contrary to the **APA's goal of creating transparent agency action.224 Instead of crafting a rule based on communications** with many stakeholders, agencies craft rules based on the needs and requests of a single party.225 Substituting **the APA's procedure** for something done in secret behind closed doors cannot be justified merely b**ecause an APA review can be conducted way down the road for a by-product** of a secretive action that contravenes the APA.226

Links: Environment

States have no control in environment projects

Alder 2
[Jonathan H. Alder is an Assistant Professor of Law, Case Western Reserve University School of Law. This chapter is adapted from the report Let Fifty Flowers Bloom: Transforming the States Into Laboratories of Environmental Policy, published by the American Enterprise Institute in January 2002, available at http://www.federalismproject.org/masterpages/environment/flowers.pdf.] JAKE LEE
Decentralizing authority and responsibility for environmental policy has the potential to address some of the greatest problems with existing environmental regulations. Current programs fail to allow state and local governments suffi- cient flexibility in tailoring their programs to local needs. State experimenta- tion occurs only along the margins of environmental policy. The central deci- sions in environmental policy, such as what constitutes a "safe" exposure or "clean" site are still made in Washington. State and local officials increasingly complain that federal laws and regulations force them to implement environ- mental programs that make little sense in their part of the country, **diverting re- sources from more pressing concerns. As a Columbus, Ohio, health official complained in the 1990s**: "The new rules coming out of Washington are taking money from decent programs and making me waste them on less important problems."15 **State environmental agencies must follow federal dictates governing minute details of regulatory programs—even where such dictates serve no substantive purpose. Federal regulations require approved state programs to impose vari- ous pollution controls, as well as to adopt various administrative reforms, including provisions to ensure adequate public participation** and facilitate citizen suits.16 Although the Clean Water Act(CWA) speaks of preserving and protecting the states' "primary" role in pollution control,17 "under the present scheme of the Act, the states generally have a choice between acquiescing to federal proscriptions or ultimately facing the prospect of federal preemption."18 States canseek"waivers"or"variances"undersomeenvironmentalstatutes,butonly if they meet detailed conditions. **Though generally described as "cooperative federalism,"19 the relationship between the states and federal government in environmental policy is typically anything but "cooperative."20 To the contrary, many state officials "resent** what they believe to be an overly prescriptive fed- eral orientation toward state programs, **especially in light of stable or decreas- ing grant awards."21 Today's overly centralized, rigid, and inefficient environmental regime fails to take advantage of the potential efficiencies inherent in the federalist system.** Transferring significant environmental authority to the **states could foster innovation and greater attention to local environmental concerns and conditions, while enhancing** accountability for environmental decisions, particularly **where environmental concerns are local in nature. There are several reasons for moving toward a more "federalist" environmental policy: knowledge, innova- tion, preference satisfaction, accountability, and "ecologies of scale."**¶

Links: LNG

The Clean water act prevents states action with LNG exports

Darby, Robins, and Webb 11[Beth L. Webb is a Partner and Joan M. Darby and Janet M. Robins are Counsel in the Energy Practice of Dickstein Shapiro LLP. All have assisted clients in federal and state agency and court proceedings involving approvals needed to construct interstate pipelines and LNG import terminals. The authors wish to thank Frederick M. Lowther, also a firm Partner, for his valuable insights and editorial assistance. "THE ROLE OF FERC AND THE STATES IN APPROVING AND SITING INTERSTATE NATURAL GAS FACILITIES AND LNG TERMINALS AFTER THE ENERGY POLICY ACT OF 2005 -- CONSULTATION, PREEMPTION AND COOPERATIVE FEDERALISM" 2011 Lexis] JAKE LEE
The CWA also provides states with the authority to grant or deny water quality certifications ("WQCs"). n91 Spe-cifically, **CWA section 401 requires that, before any federal agency can issue a "license or permit to conduct any activi-ty including, but not limited to, the construction or operation of facilities, which may result in any discharge into the navigable waters,**" the applicant must "**provide the licensing or permitting agency a certification from the State . . . that any such discharge will comply with the applicable provisions" of the CWA. n92 Because the construction of all LNG import terminals and most interstate pipelines results in some** "discharge" n93 into navigable waters, virtually all [*350] such facilities need a WQC from at least one state. n94 Until an affected state either grants a WQC**, expressly waives its right to do so, or implicitly waives its right by failing to act within a reasonable period of time, this section effectively prohibits FERC from permitting any such facility to commence construction**. n95¶ In addition to having the power to deny certification, a state granting a WQC has the authority to require the project to comply with any conditions deemed necessary to ensure the project will comply with state water quality standards, effluent limitations, **standards of performance, pretreatment standards and other requirements established by EPA, as well as "any other appropriate requirement of state law." n96 Any condition that a state imposes in its WQC must also become a condition on any authorization issued by FERC. n97**

Federal government regulates all of the coastal zones—states get no authority of the CZMA

Darby, Robins, and Webb 11[Beth L. Webb is a Partner and Joan M. Darby and Janet M. Robins are Counsel in the Energy Practice of Dickstein Shapiro LLP. All have assisted clients in federal and state agency and court proceedings involving approvals needed to construct interstate pipelines and LNG import terminals. The authors wish to thank Frederick M. Lowther, also a firm Partner, for his valuable insights and editorial assistance. "THE ROLE OF FERC AND THE STATES IN APPROVING AND SITING INTERSTATE NATURAL GAS FACILITIES AND LNG TERMINALS AFTER THE ENERGY POLICY ACT OF 2005 -- CONSULTATION, PREEMPTION AND COOPERATIVE FEDERALISM" 2011 Lexis] JAKE LEE
Finding that **"[t]here is a national interest in the effective management, beneficial use, protection, and development of the coastal zone," n105 Congress in 1972 enacted the CZMA, which encourages states to develop land and water use programs for their coastal zones**, known as "coastal zone management plans" **or "CZMPs," that provide for, inter alia**, "orderly processes for siting major facilities related to . . . energy . . . ." n106 **If a state's CZMP has been** approved by the DoC, n107 **the state has delegated federal authority** to **determine whether the activities of applicants for federal licenses are consistent** with its CZMP. n108¶ **Under the CZMA and the CZMA regulations**, n109 **any**

applicant seeking a FERC **certificate for** a proposed **natural gas project** "**affecting any** land or **water use or natural resource** of the [state's] coastal zone" must include in its applica-tion a certification that the proposed project complies, and will be conducted in compliance, **with the CZMP of the af-fected state, and, at the same time, must furnish the state's designated agency a copy of its consistency certification, together** "with all necessary data and information." n110 **The CZMA obliges** the state or its designated agency to notify FERC that it concurs with, or objects to, the applicant's [*352] certification "at the earliest practicable time" and pro-vides that, **if the state fails to give such notice within six months, the state's concurrence is** "conclusively presumed." n111 Because FERC may not permit an NGA jurisdictional facility to commence construction until the applicable re-quirements of **the CZMA have been satisfied**, n112 the CZMA, like the CWA, gives a state broad authority **to block a natural gas project.**¶ EPAct excepted CZMA decisions from **the new U.S. circuit court review provisions applicable to state action under the CWA and CAA**, n113 because the CZMA already provides for federal review. **Under the CZMA, the Secretary of Commerce may "on his own initiative or upon appeal by the applicant**" conduct a de novo review **following a state's objection to a CZMA certification**, in which the core issue is **not whether the project is consistent with the state's CZMP**, but whether the activity at issue is consistent with a statutorily-prescribed standard. n114 **Namely, the Secretary may override a state** if he finds that the activity is "consistent with the objectives of [the CZMA]," **or "otherwise necessary** in the interest of national security," **and permit a project to proceed despite the state agency's objection.** n115 **EPAct did amend the CZMA to establish new deadlines** for all such CZMA appeals, requiring the Secretary's decision to be issued not later than approximately ten months after the notice of [*353] appeal. n116 If **the Secretary declines to override a state agency's objection, the** applicant may seek judicial review of the **Secretary's negative decision in the appropriate federal district court, with a further right of review in a U.S. circuit court**. n117 EPAct provided that the record to be used on review **of a CZMA action by the Secretary of Commerce and then the federal courts** must be the consolidated record that FERC maintains. n118

Links: Offshore Drilling

Federal ownership of the OCS decreases federalism

Walls 93 [Margaret Walls is a Fellow in the Energy and Natural Resources Division of Resources for the Future, 1616 P Street, NW, Washington, D.C. 20036. "Federalism and Offshore Oil¶ Leasing Resources" 1993 http://lawlibrary.unm.edu/nrj/33/3/10_walls_federalism.pdf] JAKE LEE

Until the 1970s, the coastal states had no say in the management of¶ OCS resources. The period from 1953 to 1972 was one of geographic dual¶ federalism 1 --the coastal states managed the resources of the territorial¶ sea (the three-mile zone contiguous to the coast) **and the federal¶ government managed the OCS and neither had a say in the other's¶ affairs.1 Dual federalism ended with passage of the 1972 Coastal Zone Management Act.12 The CZMA encourages coastal states to adopt¶ comprehensive land use planning and management programs** to guide¶ coastal zone development. **Participation in the program is voluntary but¶ states are induced to participate by two provisions in the Act. First, they are¶ given grants to help pay for the programs. And second, once a state's plan¶ is approved by the Secretary of Commerce, the state can then require that¶ federal actions affecting its coastal zone be consistent with its plan. It is this¶ second provision that is important for states with OCS activities off their¶ coasts**. All federal licenses and permits that are required for OCS¶ exploration, development, and production activities-and there are a¶ number of them-must be consistent with coastal states' approved coastal¶ zone management plans.13¶ **The OCS Lands Act Amendments of 1978, though less important¶ than the CZMA, provided for more state input into OCS activities.** The¶ Amendments require the Secretary of the Interior to propose a five-year¶ leasing plan and submit the plan to the governors of the affected states for¶ review and comment. **Any comments that request modification require a¶ written response from the Secretary. If the governors' recommendations are¶ found to provide a reasonable balance between national interest** and the¶ well-being of the affected states, those recommendations are used to revise¶ the plan.¶ The Amendments also require lessees to submit exploration plans¶ and development and production plans to the Secretary of the Interior prior¶ to such activities. **These plans must be approved by the governors and¶ coastal zone management agencies of the affected states**. If the plans are¶ found to be inconsistent with coastal zone management plans, then the¶ lessee can either modify the plan and resubmit it or appeal to the Secretary¶ of Commerce **The final provision of the OCSLAA that further considered states'¶ interests was the establishment of the Offshore Oil Pollution Compensation¶ Fund. This fund was created to provide for cleanup of and compensation¶ for damages from oil spills and was funded by a 3 cent per barrel fee on oil¶ produced on the OCS**."4¶ **The OCS Lands Act Amendments of 1985 also slightly improved¶ the position of coastal states**. The Amendments require that 27 percent of¶ receipts from OCS lands within a three-mile zone adjacent to state lands be¶ shared with the coastal states. **This sharing is designed to account for¶ drainage of common pools-i.e., oil and gas reservoirs that cover both¶ federal and state lands. The Amendments also provided for distribution to¶ states of funds from this zone that had been collected and held in an escrow¶ account over the September 1978 to October 1, 1985 period."**

OCS development increases no state involvement—hurts federalism

Walls 93 [Margaret Walls is a Fellow in the Energy and Natural Resources Division of Resources for the Future, 1616 P Street, NW, Washington, D.C. 20036. "Federalism and Offshore Oil¶ Leasing Resources" 1993 http://lawlibrary.unm.edu/nrj/33/3/10_walls_federalism.pdf] JAKE LEE

Either the coastal state or the federal government could provide G"¶ **as long as it acts in a social welfare maximizing manner and takes all of the**¶ **benefits and costs of the OCS into account**. One problem with federal¶ government control of public goods in general is the "**distance of the**¶ **government from the governed" that makes it difficult, or costly, to**¶ **estimate the benefits of the public good in each state**. As a result, there is a¶ tendency toward uniformity in provision of the public good across different¶ areas. This leads to too much of the good in some states and too little in¶ others.¶ **In addition, there is another problem with federal control of the**¶ **OCS that pertains to the nature of current state involvement. Since the**¶ **states get no compensation for allowing OCS development, in many cases**¶ **they use the consistency provisions of the CZMA** to try to fight it. In so¶ doing, they lower the federal government's marginal cost of OCS¶ preservation to MC' in Figure 1-i.e., **by preserving an additional acre, the**¶ **federal government now gives up the revenues that could have been earned**¶ **on that acre less the costs of fighting the state over development**. These¶ costs take the form of delays, administrative expenses, and litigation. In¶ addition, because **oil companies realize that they themselves will incur costs**¶ **as a result of state actions**-i.e., **it is often more difficult or more costly to**¶ **get certain permits approved-they bid lower amounts** for tracts than they¶ otherwise would. As a result of the lower marginal cost curve, **the amount**¶ **of preserved OCS acreage** is pushed beyond the optimum-i.e., G' > G' in¶ Figure 1.¶ These factors-i.e., **the federal government's general tendency**¶ **toward uniformity and the states' actions pushing the federal government**¶ to provide greater preservation than is optimal-suggest that state control¶ might be more efficient than federal. However**, a state will only consider**¶ **the costs and benefits that accrue to its own citizens, thus if spillovers of benefits or costs to other states exist, there can be a role for the federal**¶ **government**. In particular, if there are cost spillovers, the coastal state will¶ provide too much G-i.e., under develop the OCS; if there are benefit¶ spillovers, the state will provide too little C-i.e., overdevelop.¶ **The argument used most against state control is the cost spillover**¶ **argument. In addition to the foregone revenues from not leasing, the**¶ **argument goes, there are also foregone benefits in the form of energy**¶ **security.** This raises the marginal cost curve in Figure 1 and leads to a new¶ optimum less than G" (more development). Because energy security¶ benefits accrue to the country as a whole, an individual state would have¶ very little incentive to take them into account. This argument is alluded to¶ Sumamer 1993]NATURAL RESOURCES JOURNAL¶ in nearly every discussion about federal-state relations on the OCS.' In¶ addition, the energy security rationale for OCS development is explicit in¶ the language of the OCSLAA (see page 2 above). Unfortunately, the¶ argument is based on a faulty notion of energy security.¶ An energy security externality exists because there is a wedge¶ between the marginal private and marginal social costs of imported oil.¶ **This wedge consists of two components: the "demand component" and the**¶ **"disruption component".' The demand component exists when the**¶ **United States demand for imported oil is large enough to affect the world**¶ **oil price**. Suppose, for example, **that the U**nited **S**tates **imports three million**¶ **barrels of oil per day** for which it pays $15 per barrel. Suppose further that¶ demand increases by one million barrels per day and that, as a result, the¶ world price increases by $1 per barrel. The price of oil-i.e., its marginal¶ private cost-is $16 but the marginal social cost is $19 ($16-4 - $15"3). In this¶ case, **individual consumers in the U**nited **S**tates **do not take into account the**¶ **impact** t**hat their own consumption has on the world pric**e. **A restriction on**¶ **imports could be beneficial because the reduction in payments to foreign**¶ **producers** is more than offset by the value of oil to United States¶ consumers.

Links: Offshore Projects

Having states work on offshore projets k2 federalism

Rachael E. **Salcido**. **2008**. Offshore Federalism and Ocean Industrialization. 82 Tul. L. Rev. 1355 (2007-2008) Offshore Federalism and Ocean Industrialization. Professor of Law Director, Sustainable Development Institute Director, Environmental Law Concentration B.A., J.D., University of California, Davis Professor Rachael Salcido is a scholar of environmental and natural resources law, with particular expertise in ocean and coastal law and ecosystem restoration. Her articles have appeared in prominent law journals and she is an active member of the Rocky Mountain Mineral Law Foundation. GD

The General Challenge of Physical Borders Although an early understanding of the role of the federal government presumed that it would not own significant real property within the United States,269 a profound shift in the rapid disposition policy of Congress led to the federal government retaining a great deal of land, particularly in the Western United States.27° Similar to the Seaweed Rebellion involving the coastal states and the federal OFFSHORE FEDERALISM government following the tidelands cases, the Sagebrush Rebellion sought to eliminate federal control over property within the boundaries of individual Western states.27' Indeed, this tension still persists onshore and can provide interesting analogies for the offshore context. **Two leading public lands cases illustrate how physical borders can frustrate attempts at rational environmental regulation. Minnesota v Block involved an extraordinary stretch of "lakeland canoe wilderness.** 2712 Using the Wilderness Act of 1964, **Congress designated** the Boundary Waters Canoe Area (**Boundary Waters**), a wilderness area, **in** 1978.273 Section 4 of **the Boundary Waters Canoe Area Wilderness Act** prohibited motorized craft in all but specific designated areas of the Boundary Waters, even regulating areas not owned by the federal government." ' As **the U**nited **St**ates Court of Appeals for the Eighth Circuit explained, "[t]he United States **owns ninety percent of the land within the borders of the BWCAW area. The State of Minnesota, in addition to owning most of the remaining ten percent of the land**, owns the beds of all the lakes and rivers within the BWCAW."" The State of **Minnesota** (together with the National Association of Property Owners, individuals, and other organizations) **responded by challenging the constitutionality of federal restrictions on motorboats and snowmobiles on nonfederal land**.76 Surveying the background to the suit, the Eight Circuit noted that the federal government and the State of Minnesota had both attempted to preserve the "primitive character" of the Boundary Waters.27 Thus, while the state and federal governments each recognized the vital need to conserve the Boundary Waters as a natural resource, the details of their commitments to conservation differed."8 **The Eighth Circuit resolved this dispute in favor of the federal government**. 9 It held that "Congress may regulate conduct off federal land that interferes with the designated purpose of that land."28" **In resolving the constitutional** 2008] 1399 TULANE LA WREVIEW **challenge, the Eighth Circuit determined that the management of state areas conflicted with the federal objectives for the Boundary Waters** and that **congressional power to protect public lands under the Property Clause extends to regulation of nonfederal property "[a]s a necessary incident of that power**."28' The ruling in this case is not without precedent, as prior decisions also support federal regulation of nuisance-like activities off federal lands that impacted federal lands.282 Block illustrates the need for consistent management objectives across state and federal borders. The court found that federal objectives-specifically, providing a peaceful and serene environment-were supreme to those of the State of Minnesota.283 Thus, **this case illustrates the disparate scope of federal and state regulatory power.** Put simply, **while states can dictate the use of federal lands only by wielding their political influence to achieve a legal goal (such as a federal development moratorium or a cooperative management scheme like the CZMA), the federal government can dictate to some extent the management of state lands.** 8 The **potential for intergovernmental conflict also exists in offshore areas. A state might designate an area open to commercial fishing while the federal government designates an adjacent ocean area protected as a "no-take marine reserve" or similar conservationoriented designation.** At the boundary line, species protected within federal areas lose such status and can be captured, frustrating federal efforts at conservation. **This scenario is not just speculative**. When the federal government designated areas of the Northern Hawaiian Islands as a marine reserve, state officials expressed concern about the impact 1400 [Vol. 82:1355 OFFSHORE FEDERALISM on adjacent state management objectives, including management of commercial fishing.285 **Hawaiian officials were reluctant to provide similar protection to state areas, and fortunately an informal resolution of the conflict, including federal subsidies to fishermen to obtain stakeholder buy-in, avoided any legal conflict where the supremacy of federal objectives would make conflicting state objectives**

recede.286 **Similar to the hypothetical involving the fishery resource, the Supreme Court ruled that the federal government can manage wild horses and burros that migrate across state and federal borders pursuant to Property Clause authority**.287 In Kleppe v NewMexico, the Supreme Court held that the Property Clause supported protection of public lands and that such protection extended to wild horses and burros that Congress protected from harm and harassment by the Wild Free-Roaming Horses and Burros Act (WFRHBA).288 **Although the animals themselves were not necessarily federal property, 9 the Supreme Court held that Congress had the power to protect the animals regardless of whether they were on federal or state lands**. 9° The Court rejected the position of New Mexico, which argued that the WFRHBA was focused on protection of wild horses and burros, rather than the land on which they lived.' The Court initially noted that it was "far from clear that the Act was not passed in part to protect the public lands of the United States."29' 2 This led some commentators to argue that the Court's decision in Kleppe foreshadowed an understanding of ecosystem management and the connection of wildlife and thriving natural environments. 93 2008] 1401 TULANE LAW REVIEW **Block and Keppe illustrate a growing understanding of the limitations of regulating the environment only within political borders. Effective stewardship of the environment requires broader ecosystem targets that often implicate a need for transboundary management**. 4 The powers of the federal government can be construed broadly to facilitate such stewardship. 295 Federal prerogatives will prevail unless states use their political influence, but this power dynamic is not necessarily likely to lead to cooperative management. In some cases, it can completely thwart federal objectives. The offshore oil-drilling moratoriums and payment by fisheries' stakeholders in the Northern Hawaiian Islands marine reserve are two important examples of this shortcoming. Thus, **there is a need for alternative incentives to achieve cooperation when state and federal management ideals would otherwise diverge.**

Links: Offshore

Resolving federalism disputes key to success in offshore

Rachael E. **Salcido**. **2008**. Offshore Federalism and Ocean Industrialization. 82 Tul. L. Rev. 1355 (2007-2008) Offshore Federalism and Ocean Industrialization. Professor of Law Director, Sustainable Development Institute Director, Environmental Law Concentration B.A., J.D., University of California, Davis Professor Rachael Salcido is a scholar of environmental and natural resources law, with particular expertise in ocean and coastal law and ecosystem restoration. Her articles have appeared in prominent law journals and she is an active member of the Rocky Mountain Mineral Law Foundation. GD

In a recent article on the emergence of additional offshore uses, Professor John A. Duff urged that we extend our lessons from public lands management to offshore management.257 Professor Duff specifically looked to the Federal Lands Policy and Management Act (FLPMA), adopted by Congress in 1976, to distill important policy goals such as retention of public lands, conservation, and multiple-use sustained yield management principles."**8 One aspect of public lands management that is a potential source of ways to improve offshore management is the resolution of federalism conflicts**. **Several cases involving natural resource management conflicts on the public lands illustrate the inevitability of the unfolding ocean federalism disputes.** These cases often involve wildlife or conservation objectives or plans for natural resource development.259 Two constitutional provisions, the Property Clause2 6 ' and the Supremacy Clause,26" ' are often at issue in these federalism disputes on public lands.262 In addition to the Property Clause, constitutional provisions such as the Commerce Clause, the Navigational Servitude (implicit in the Commerce Clause),263 and the 2008] 1397 1398 TULANE LA WRE VIEW [Vol. 82:1355 so-called War Power" also sustain the legality of federal activities outside of federally owned lands and have been tested thoroughly in the context of onshore water regulation and development."5 These constitutional provisions have generally been applied to support federal government actions beyond the boundaries of federal property.**26 But in designing our model of federalism, the Founders enabled potential activities of multiple sovereign powers within the United States.267 This framework's design creates a tension with states at physical borders, particularly in the modem environmental law and natural resources context where a transition to ecosystem management is sought.268**

Addressing states lack of influence k 2 successful development of offshore

Rachael E. **Salcido**. **2008**. Offshore Federalism and Ocean Industrialization. 82 Tul. L. Rev. 1355 (2007-2008) Offshore Federalism and Ocean Industrialization. Professor of Law Director, Sustainable Development Institute Director, Environmental Law Concentration B.A., J.D., University of California, Davis Professor Rachael Salcido is a scholar of environmental and natural resources law, with particular expertise in ocean and coastal law and ecosystem restoration. Her articles have appeared in prominent law journals and she is an active member of the Rocky Mountain Mineral Law Foundation. GD

IV MENDING OFFSHORE FEDERALISM CONFLICTS **Having evaluated the development of offshore federalism, it is clear that the governing relationship is both shaped and undermined by a lack of commitment to long-term goals-including environmental protection, energy security, and public access-and continued pursuit of revenues from offshore development**. Moreover, **the most recent amendments to the legal structure envision a dramatic increase in EEZ development and federal regulatory activities and reflect efforts to curtail state influence.** Constant competition for the right to control the use and development of ocean resources has been, and today remains, the hallmark of offshore federalism. 6 **These shortcomings must be addressed. There is no sound reason to continue to adhere to an ineffective regulatory structure that perpetuates conflict and fails to achieve its stated goals. Breaking this 1396** OFFSHORE FEDERALISM **pattern requires coordination by state and federal agencies, beginning with an agreement on a hierarchy of**

uses and shared objectives for ocean management. In this Part, I review lessons from federalism disputes on public lands and then evaluate proposed revisions to the offshore federalism structure that could help mend the continued conflicts over resource development and conservation that are needed prior to fill-scale development of our offshore areas.

Links: OSW

Federal government will revise the CZMA law—hurts federalism

Schroeder 10 [Erica Schroeder is a J.D., University of California, Berkeley, School of Law "TURNING OFFSHORE WIND ON" October 2010 http://scholarship.law.berkeley.edu/cgi/viewcontent.cgi?article=1069&context=californialawreview] JAKE LEE

To give this new offshore renewable energy mandate effect, Congress or¶ the Secretary of Commerce **should instruct states to revise their CZMPs** in¶ 270 order to achieve full compliance with the new requirement. **Once the plans¶ are revised, the CZMA already provides the Secretary of Commerce with a¶ mechanism to ensure there are no gaps or deficiencies in state plans**. As noted¶ previously, **before approving a state's CZMP**, **the Secretary of Commerce must¶ ensure the CZMP is in compliance with the CZMA and all other additional¶** 27 rules and regulations the Secretary has promulgated.271 **If the CZMA's¶ "purposes" were to include promotion of offshore wind power generation,** the¶ Secretary of Commerce could make sure **the CZMPs carry out that purpose.¶ Thus, states could retain some measure of control, but the broader benefits¶ of offshore wind power development would be integrated into both the CZMA¶** and the CZMPs. **As noted previously, CZMPs revised in favor of offshore wind¶ would also give proponents of development more statutory support in any state¶ litigation by offshore wind opponents and may even deter such litigation¶ altogether.**

Last few years have shown legal changes in the OCSLA-CZMA in favor of offshore federalism

Rachael E. **Salcido**. **2008**. Offshore Federalism and Ocean Industrialization. 82 Tul. L. Rev. 1355 (2007-2008) Offshore Federalism and Ocean Industrialization. GD

In the last few years, a **number of legal changes have been made to modernize the OCSLA-CZMA framework for offshore and coastal developments.**"9 The **OCSLA-CZMA process has implications for aquaculture, offshore minerals, LNG, wind and wave power, and desalination**.'9° **Crisis** again **is the impetus for changes-initially illustrated by the collapse of commercial fisheries, toxic algae blooms, and beach closures due to bacterial contamination of adjacent waters**.' The horrors inflicted on Gulf Coast residents by the devastation of Hurricane Katrina also brought to light the environmental impacts of energy development and the loss of coastal wetlands that provided a natural hurricane buffer.'92 **But more than anything, the drive for industrialization to serve human needs is leading the way for legal reforms.'**93 **Richard Charter,** Co-Chair of the National Outer Continental Shelf Coalition **put it thusly**: **In an increasingly urgent quest for fuel, food, and minerals, our nation has arrived at the margins of the North American Continent and now appears to be inevitably headed offshore**. **We are now turning to the exploitation of the ocean in new ways-searching for the raw materials becoming a common practice in land-use development as a form of environmental protection.** of an industrial society-looking relentlessly for protein to feed humans and pen-reared fimfish, trying to find more oil and natural gas to power our machinery, digging up metals with which to build still more machines, while desperately seeking a place to dump our industrial waste and to find a repository in which to hide

excess carbon byproducts to halt the dangerous warming of our global climate. 94 The **expert reports published by USCOP and the Pew Charitable Trust (Pew) have also driven legal changes.** The USCOP report touted the OCS legal regime as mature and an appropriate platform for continued development offshore. "' **According to their assessment, this OCS legal framework benefits from its endurance over time, though notably it is still fraught with contention.'**96 The statutory and regulatory framework is "process rich"; it has been well-tested through litigation and it has some measure of transparency.' 7 **The USCOP endorsement helped usher in a reinvigoration of the OCSLA-CZMA framework for offshore development.** In the EPA of 2005, Congress both expanded OCSLA and revised the CZMA to facilitate offshore development.'98 Unfortunately, **Congress did not address the many flaws of the framework, relying instead on preemption, avoidance of environmental concerns, and rhetoric, rather than long-term plans for EEZ development.9** In large part, **the most recent amendments to the law impacting the offshore federalism relationship came from the EPA of 2005.**2°° Some of the changes affect the unique state-federal sharing of the burdens and benefits of offshore development and coastal management."'

Cape Wind is an example—the federal government rejected the process—states were not able to do offshore wind in their CZMA

Powell 13

[Timothy Powell is a J.D. Candidate, Boston University School of Law, 2013; B.A. Environmental Economics, Colgate University, 2007 "REVISITING FEDERALISM CONCERNS IN THE ¶ OFFSHORE WIND ENERGY INDUSTRY IN LIGHT OF ¶ CONTINUED LOCAL OPPOSITION TO THE CAPE WIND ¶ PROJECT" 2013]JAKE LEE

The Cape Wind story demonstrates that the siting of offshore wind projects ¶ leads to a unique interplay between federal and state interests. The **Cape Wind ¶ turbines will be located entirely in federal waters, but electricity transmission ¶ cables will run under state waters and lands to connect to the local power grid**.4 ¶ The Coastal Zone Management Act (**CZMA) provides** the primary mechanism ¶ for **balancing federal and state interests in U.S. coastal resources**.5 Under the ¶ regime set up by the CZMA, states are given broad discretion to create their ¶ own Coastal Zone Management Plans (**CZMPs) regulating the use of resources ¶ within state waters, defined as those waters within three miles of the ¶ shoreline.6 The federal government retains regulatory and permitting authority** ¶ over all federal waters beyond three miles of the shoreline; however, the ¶ mechanism of federal consistency review extends state power further, beyond ¶ their coastal zones, by allowing states to review and sometimes overrule ¶ federal actions and permits in federal waters when the activity affects the ¶ state's coastal zone.7 Nevertheless, the federal government retains ultimate ¶ permitting authority; the U**.S. Secretary of Commerce can overrule a state's ¶ protest by finding that a permit is consistent with the objectives of the CZMA** ¶ or otherwise in the interest of national security.8¶ A robust literature has developed analyzing and critiquing the regulatory ¶ scheme in place for the approval of offshore wind facilities.9 **Most ¶ commentators have focused on the complexity and incoherence of the ¶ regulatory process faced by Cape Wind, ultimately proposing regulatory ¶ modifications that increase federal control of the permitting process.10 What is often lost in these arguments for federal preemption and mandates for offshore ¶ wind development on U.S. coasts**, however, is that such projects can have ¶ considerable local impact. Even proponents of increased federal control ¶ acknowledge that, "[w]hile the most compelling benefits of offshore wind are ¶ frequently regional, national, or even global, the costs are almost exclusively ¶ local."11 ¶ **The purpose of this Note is to continue an ongoing conversation about ¶ federalism in the development of**

offshore wind energy.12 Specifically, this ¶ Note examines two recent developments in the opposition to the Cape Wind ¶ project. After receiving all required federal, state, and local approvals to ¶ proceed with the project, Cape Wind continues to face resistance from local ¶ groups. The first recent development occurred on July 6, 2011, when the ¶ Aquinnah Wampanoag Tribe of Gay Head in Martha's Vineyard, ¶ Massachusetts, filed suit in the U.S. District Court for the District of Columbia ¶ against **the federal government, challenging its approval of the Cape Wind ¶ project.13 The Tribe alleges that the project will destroy the Tribe's historical, ¶ cultural, and spiritual resources located on Horseshoe Shoal**, now listed in the ¶ National Register of Historic Places.14 In particular, the Tribe claims that the project would disrupt the currently unobstructed view of the eastern horizon, ¶ necessary for the Tribe's sunrise ceremonies, as well as disturb the seabed of ¶ Horseshoe Shoal where the Tribe's ancestors lived and were likely buried ¶ when the shoal consisted of dry land.15 The second recent development ¶ occurred on October 28, 2011, when, in a challenge brought by several groups ¶ of local citizens, the U.S. Court of Appeals for the District of Columbia Circuit ¶ overturned the Federal Aviation Administration's (FAA) Determination of No ¶ Hazard to Air Navigation, claiming that the FAA had misread its regulations ¶ and remanding for more thorough review.16 In August 2012, the FAA reissued ¶ a Determination of No Hazard,17 and local citizens again filed suit challenging ¶ the Determination.18¶ While in general the federal government has significant interests in retaining ¶ regulatory control over federal waters, **within the context of offshore wind ¶ energy there may be significant benefits to allowing greater state control over ¶ the permitting process. First, opposition from citizen groups, like that faced by ¶ the Cape Wind project, may be more efficiently addressed by allowing more ¶ localized control of regulations and permitting**. Second, granting states ¶ complete control over permitting may increase competition among states to ¶ attract offshore wind energy developers and lead to a more efficient and ¶ desirable allocation of offshore wind energy facilities throughout the United ¶ States. ¶ **Thus, using Cape Wind as a case study, this Note analyzes the current ¶ regulatory scheme for offshore wind projects and the balance of federal and ¶ state control in the context of these recent developments in local opposition to ¶ the Cape Wind project**. The Note proposes a regulatory solution that would ¶ "invert" the current **CZMA power scheme by placing the primary permitting ¶ authority in the hands of coastal states. This, in turn, would lower the costs ¶ and barriers to entry for future offshore wind energy projects in the U**nited ¶ **S**tates **and lead to a more efficient allocation of our offshore wind energy ¶ resources**. Part I provides an explanation of the current regulatory scheme **under the CZMA** and the Outer Continental Shelf Renewable Energy Program ¶ (OCSREP). Part II provides a brief history of the Cape Wind project up to the ¶ final approval of the project by the U.S. Department of the Interior (DOI). Part ¶ III describes the two recent impediments faced by the Cape Wind project: the ¶ lawsuit filed by the Aquinnah Wampanoag Tribe and the D.C. Circuit's ¶ rejection of the FAA's approval of the project. **Finally, Part IV evaluates the ¶ balance of federal and state interests envisioned by the CZMA and the ¶ OCSREP, ultimately arguing for a revision to the CZMA that would increase ¶ local control over project siting and lead to a more efficient allocation of ¶ offshore wind facilities by allowing states to compete for projects.**

Offshore wind plan happens in the CZMA—the plan uses federal action to take jurisdiction over the states—moots federalism

Powell 13 [Timothy Powell is a J.D. Candidate, Boston University School of Law, 2013; B.A. Environmental Economics, Colgate University, 2007 "REVISITING FEDERALISM CONCERNS IN THE ¶ OFFSHORE WIND ENERGY INDUSTRY IN LIGHT OF ¶ CONTINUED LOCAL OPPOSITION TO THE CAPE WIND ¶ PROJECT" 2013]JAKE LEE

The CZMA "provides the primary mechanisms for balancing federal and ¶ state interests in U.S. coastal reserves."19 Control over offshore-wind-project ¶ siting is shared by state and federal governments, with jurisdiction determined ¶ geographically: states maintain control of their coastal zones, which are ¶ defined as extending three miles seaward from the coastline, and the federal ¶ government retains control of the Outer Continental Shelf **(OCS)** beyond that ¶ three-mile zone.20 **States are required to submit a CZMP to the Secretary of ¶ Commerce.21 The CZMP must reflect the broad purpose of the CZMA** "to ¶ preserve, protect, develop, and where possible, to restore or enhance, the ¶ resources of the **Nation's coastal zone for this and succeeding generations."22 ¶ While states are given considerable discretion over the management of their ¶ coastal zones**

through CZMPs,23 such plans are nevertheless subject to the ¶ approval of the Secretary of Commerce "in accordance with rules and ¶ regulations promulgated by the Secretary . . . and with the opportunity of full ¶ participation by relevant Federal agencies."24 Most relevant to a state's own ¶ interest in deciding whether to promote offshore wind energy within its coastal ¶ zone, **the CZMA requires that state CZMPs provide "adequate consideration of ¶ the national interest involved** in planning for, and managing the coastal zone, ¶ including the siting of facilities such as energy facilities which are of greater ¶ than local significance."25¶ 19 Schroeder, supra note 2, at 1634. ¶ 20 43 U.S.C. § 1312 (2006). ¶ 21 16 U.S.C. § 1455(d) (2006) (listing the steps the federal government must take before ¶ approving a management program submitted by a coastal state). ¶ 22 Id. § 1452(1). ¶ 23 Schroeder, supra note 2, at 1645. ¶ 24 16 U.S.C. § 1455(d)(1). ¶ 25 Id. § 1455(d)(8). 2012] FEDERALISM AND OFFSHORE WIND ENERGY 2029 ¶ **Most proposed offshore wind projects, including Cape Wind, would be ¶ located more than five miles offshore, in federal waters.26 Thus, the ¶ electricity-generating component of most offshore wind projects**, the wind ¶ turbines themselves, are subject to federal jurisdiction. **State governments ¶ nevertheless play a role in the approval process of offshore wind projects under ¶ the CZMA for two reasons. First, electricity generated by such projects must ¶ be transmitted to land through cables on the seabed, which necessarily travel ¶ through the state's coastal zone.** States therefore can exert control over the ¶ permitting process for the transmission-cable component of an offshore wind ¶ project by providing for such a process in their CZMPs. **Second, the CZMA ¶ provides a mechanism for states to extend their role beyond the coastal zones ¶ through the process of federal consistency review.27 Pursuant to federal ¶ consistency review,** "[e]ach Federal agency activity within or outside the ¶ **coastal zone that affects any land or water use or natural resource of the coastal ¶ zone shall be carried out in a manner which is consistent to the maximum ¶ extent practicable with the enforceable policies of approved State management ¶ programs."28 Under federal consistency review requirements, applications for ¶ a required federal license or permit to conduct an activity in or outside the ¶ coastal zone must include** "a certification that the proposed activity complies ¶ with the enforceable policies of the state's approved program."29 A state then ¶ has the opportunity to review the application, and either concur or object to the ¶ applicant's certification.30 **In this manner, the CZMA seeks to encourage state ¶ involvement in the management of coastal resources even outside each state's** ¶ coastal zone.31 The Secretary of Commerce, however, ultimately controls **final ¶ approval of any such federal license or permit, and may overrule a state's ¶ objection by finding that "the activity is consistent with the objectives of [the ¶ CZMA] or is otherwise necessary in the interest of national security."32**

Challenges for the states to approve Cape Wind—Federalism would be destroyed if any offshore project would happen by the Federal Government

Powell 13 [Timothy Powell is a J.D. Candidate, Boston University School of Law, 2013; B.A. Environmental Economics, Colgate University, 2007 "REVISITING FEDERALISM CONCERNS IN THE ¶ OFFSHORE WIND ENERGY INDUSTRY IN LIGHT OF ¶ CONTINUED LOCAL OPPOSITION TO THE CAPE WIND ¶ PROJECT" 2013]JAKE LEE

Following these defeats in federal courts, the local citizen groups continued ¶ to **challenge approval of the Cape Wind** project **in state court.** Several such ¶ challenges merit **discussion in the context of the federalism concerns discussed** ¶ in this Note**. In 2005, the Massachusetts Energy Facilities Siting Board,** acting ¶ pursuant to chapter 164, section 69J of the Massachusetts General Laws, ¶ **approved Cape Wind's petition to build and operate two underground and ¶ undersea electric transmission cables that would connect Cape Wind's ¶ proposed offshore wind energy facility to the regional electric power grid**.71 ¶ To guarantee that the transmission lines were not unnecessarily built, the Siting ¶ Board conditioned its approval by determining that construction on the lines ¶ could not begin until Cape Wind had successfully obtained permits required to ¶ begin construction of the wind farm, including all necessary federal ¶ approvals.72 The Alliance objected to the timing and conditional nature of the ¶ Siting Board's approval.73 **The Massachusetts Supreme Judicial Court denied ¶ the Alliance's objections, giving "great deference to the board's expertise and ¶ experience," and holding that the conditional permit given to Cape Wind was ¶ an "effective method to accomplish its statutory obligation to determine ¶ whether there was a need for the proposed transmission**

lines."74 ¶ In March 2007, the Secretary of the Executive Office of Energy and ¶ Environmental Affairs issued a certificate approving Cape Wind's Final ¶ Environmental Impact Report (FEIR).75 **In similar fashion to the Siting ¶ Board's conditional approval of Cape Wind's proposed transmission lines, the ¶ Secretary emphasized the limited jurisdiction of the certificate: Cape Wind's Final Environmental Impact Statement was approved only with respect to that ¶ portion of the project subject to the** Massachusetts Environmental Protection ¶ Act (**MEPA), namely, the electric transmission cables running under only state ¶ waters.**76 In May 2007, Ten Taxpayers brought suit challenging various ¶ aspects of the certificate, and in particular, challenging the Secretary's ¶ statement of limited jurisdiction and calling for full review of the ¶ environmental impact of the project.77 A Massachusetts superior court ¶ dismissed the suit, stating: ¶ MEPA and its implementing regulations make clear that **the Secretary ¶ does not have authority to review those portions of the project located in ¶ federal waters. Any attempt by the plaintiff to assert that state laws are ¶ applicable and, therefore, should govern those portions of CWA's project** ¶ proposed for federal waters is unavailing. Therefore, the Secretary ¶ properly limited the scope of CWA's Final Environmental Impact Report ¶ to the transmission cables, the portion of the project within the ¶ jurisdiction of state permitting agencies.78¶ In 2009, **the Town of Barnstable, Massachusetts, on Cape Cod, mounted ¶ another attack on the Energy Facilities Siting Board.79 The suit challenged the ¶ Siting Board's authority to override a decision made by the Cape Cod ¶ Commission,** a Barnstable County regional planning and land use agency.80 ¶ The Cape Cod Commission must approve any project that falls under ¶ **Barnstable County's statutes as a Development of Regional Impact (DRI) ¶ before construction begins.81 After several public hearings, on October 18, ¶ 2007, the Cape Cod Commission denied Cape Wind's DRI approval** ¶ application, citing Cape Wind's failure to provide enough information for the ¶ Commission **to determine the project's impact and consistency with a regional ¶ policy plan.82 Cape Wind subsequently applied to the Siting Board for a ¶ certificate of environmental impact and public interest,** approval of which ¶ would serve to override the Cape Cod Commission's decision.83 A Massachusetts superior court dismissed the suit, holding that the Town of ¶ Barnstable had failed to exhaust its administrative remedies before the Siting ¶ Board, including filing briefs, presenting witnesses, cross-examining ¶ witnesses, and filing comments on the tentative decision, before seeking ¶ declaratory judgment from the court.84¶ Following the Siting Board's issuance of the certificate of environmental ¶ impact and public interest for the Cape Wind project in March 2007, the Town ¶ of Barnstable, the Alliance, and Ten Taxpayer banded together to challenge the ¶ certificate on various technical grounds.85 In 2010, a Massachusetts Superior ¶ Court denied the plaintiffs' motion for summary judgment, holding that the ¶ plaintiffs did not meet their "difficult burden of demonstrating that the ¶ Secretary acted arbitrarily and capriciously in certifying the FEIR with respect ¶ to the portion of the project" within state jurisdiction.86 Most important, the ¶ court emphasized that it "firmly believe[d] the plaintiffs's [sic] legitimate ¶ concerns with respect to the impacts of the Wind Farm must be addressed in ¶ the context of the federal [National Environmental Policy Act] review and ¶ permitting process."87¶ Finally, the same coalition brought another challenge to the Siting Board's ¶ issuance of the certificate.88 **This challenge also proved unsuccessful; the ¶ Massachusetts Supreme Judicial Court held that the Siting Board had properly ¶ limited its jurisdiction, and found sufficient evidence to support the Siting ¶ Board's substantive findings in support of the certificate.**89 As with all of the ¶ previous challenges at the state level, the court emphasized that ultimate ¶ approval of the project rested in federal hands: "**In reviewing the siting board's ¶ decision . . . to authorize Cape Wind's construction of the transmission lines, ¶ this court approved of the siting board's determination that it was required to ¶ defer to Federal review. We do so again here."9**

Federal Government overturns FAA's approval of Offshore wind to the states

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[Timothy Powell is a J.D. Candidate, Boston University School of Law, 2013; B.A. Environmental Economics, Colgate University, 2007 "REVISITING FEDERALISM CONCERNS IN THE ¶ OFFSHORE WIND ENERGY INDUSTRY IN LIGHT OF ¶ CONTINUED LOCAL OPPOSITION TO THE CAPE WIND ¶ PROJECT" 2013]JAKE LEE

Cape Wind notified the Federal **A**viation **A**dministration of **its proposed ¶ construction of an offshore wind energy facility, which is required by federal ¶ regulations.**125 After a preliminary investigation, the FAA issued a Notice of ¶ Presumed Hazard and initiated more extensive aeronautical studies to decide ¶ whether the project would "**result in**

an obstruction of the navigable airspace or ¶ an interference with air navigation facilities and equipment or the navigable ¶ airspace."126 The FAA also circulated a public notice of these studies and ¶ invited interested persons to submit comments.127 **The FAA "ultimately issued ¶ 130 identical Determinations of No Hazard, one for each of the proposed wind ¶ turbines."**128 In the determinations, the FAA concluded that the turbines ¶ "would have no substantial adverse effect on the safe and efficient utilization of the navigable airspace by aircraft or on the operation of air navigation ¶ facilities."129 **Although it ultimately decided that the project was not a hazard, ¶ "its decision was contingent on Cape Wind's implementing** a number of ¶ measures to mitigate the turbines' adverse impact on nearby radar facilities."130 ¶ **The Town of Barnstable and the Alliance to Protect Nantucket Sound ¶ challenged the FAA's Determinations of No Hazard, arguing that the FAA ¶ violated its governing statute, misread its own regulations, and arbitrarily and ¶ capriciously failed to calculate the dangers posed to local aviation.**131¶ The court first addressed the petitioners' standing. Of the three prerequisites ¶ to Article III standing – injury, causation, and redressability – **the FAA ¶ conceded only the petitioners' injury claim**, including the risk of collisions and ¶ delay for flights over Nantucket Sound, **which would impact some members of ¶ the Alliance and the Town of Barnstable.132 The court, however, concluded ¶ that the petitioners had sufficiently demonstrated causation and redressability ¶ in addition to injury.133 The court found that the Department of the Interior ¶ had assigned the FAA a significant role in the decisionmaking process,** to the ¶ extent that if the FAA had instead determined that the Cape Wind project ¶ posed such a hazard as the petitioners alleged, DOI was significantly more ¶ likely to revoke or modify its lease to Cape Wind.134¶ **The petitioners submitted evidence containing numerous contentions that ¶ the Cape Wind project might pose a considerable safety risk to aviation in ¶ Nantucket Sound.135 The court agreed, stating: "While of course the wind ¶ farm may be one of those projects with such overwhelming policy benefits** and political support) as to trump all other considerations, even as they relate ¶ to safety, the record expresses no such proposition."136¶ On **the merits, the court agreed with petitioners that the FAA improperly ¶ applied its own regulatory handbook.137 The FAA can find a hazard if the ¶ proposed structure would have a "substantial adverse effect" on a "significant ¶ volume of aeronautical operations."138 In determining that the Cape Wind ¶ facility posed no hazard to aeronautical operations,** the court found that the ¶ FAA relied solely on section 6-3-8(c)1 of the handbook, which states that a ¶ structure would have an adverse effect upon air navigation if its height is ¶ greater than 500 feet above the surface (the proposed wind turbines would ¶ stand at 440 feet above the sea).139 **The court concluded that the FAA ¶ improperly "leapt to the conclusion that the turbines would not have an adverse ¶ effect" when a clear reading of section 6-3-8(**c)1 of the handbook identifies a ¶ structure over 500 feet as merely one of potentially many circumstances in ¶ which a structure could have an adverse effect.140 This "misplaced reliance" ¶ on section 6-3-8(c)1, **particularly in light of the evidence presented by the ¶ petitioners, convinced the court that the Cape Wind project "may very well be ¶ such a hazard."141 The court vacated the FAA's Determinations of No Hazard ¶ and remanded so that the FAA could address the issues raised in the court's ¶ decision and explain its conclusion.**142¶ In August 2012, **the FAA**, after revisiting its aeronautical study and ¶ considering fourteen public comments submitted by local citizens and aviators, ¶ **again issued a Determination of No Hazard to Air Navigation**.143 Using ¶ notably stronger language than in its earlier Determination, the FAA released a ¶ statement to the media explaining that it "has determined that the proposed ¶ construction of the 130 wind turbines, individually and as a group, has no ¶ effect on aeronautical operations."144 The Alliance to Protect Nantucket Sound, in turn, has again filed suit in federal court challenging the **FAA's ¶ Determination of No Hazard.145 This time, however, the Alliance is advancing ¶ an accusation that the FAA's Determination of No Hazard was reached under ¶ political pressure from the Obama Administration, at the expense of safety ¶ concerns**.146 An August, 2012 press release from the Alliance alleges that ¶ recently leaked internal FAA emails revealed officials' concern that it would ¶ be "very difficult politically to refuse approval."147 Indeed, a congressional ¶ investigation into the FAA's approval148

resulted in a letter to the President ¶ asserting that "[d]ocuments show that your personal interest in the **Cape Wind ¶ offshore wind farm may have created pressure on career officials to approve ¶ the project**."149 As this Note goes to press, the Alliance's challenge continues ¶ to be litigated.

Links: Aquaculture????

The federal government regulate aquaculture

Jacobs 12
[Wendy Jacobs is the director of the Harvard Law blog "OFFSHORE AQUACULTURE ¶ REGULATION UNDER THE ¶ CLEAN WATER ACT" December 2012 http://blogs.law.harvard.edu/environmentallawprogram/files/2013/10/CWA-aquaculture-FINAL_revised-10-2-13.pdf] JAKE LEE
The objective of the CWA "is to restore and maintain the chemical, physical, and biological integrity of ¶ **the Nation's waters**."1¶ **To achieve this goal, the Clean Water Act (CWA) makes unlawful "any discharge of ¶ any pollutant" without a permit2¶ and confers broad authority on the** Environmental Protection Agency ¶ (**EPA) to protect water quality** by regulating discharges of pollutants into the nation's waters. **The goals ¶ and framework set forth by the CWA thus lay an adequate foundation for controlling the water quality ¶ impacts of aquaculture. While offshore aquaculture is still a nascent industry, EPA can—and should—¶ develop appropriate tools to establish adequate** oversight of these facilities in federal ocean waters ¶ ("ocean").**3¶ Specifically, we recommend that EPA:¶ 1. ensure that all offshore facilities that discharge into the ocean**—and particularly facilities ¶ using novel or untested technologies—are considered point sources and must obtain a ¶ discharge permit;¶ 2. improve the standards for offshore aquaculture facility permits to set numeric limits for all ¶ types of discharges, **including escapes of cultivated fish; and¶ 3. identify data needs and develop requirements for monitoring and reporting for all facilities ¶ in the ocean, regardless of the facility's size or output, to allow determination of whether a ¶ proposed facility may cause undue degradation of the ocean**

Impacts

!!2NC Impact!!

Federalism is key to prevent federal overstretch – controls root cause of general terrorism, economic collapse, and Taliban resurgence in Afghanistan

Nivola 10
[Pietro S. Nivola, senior fellow and C. Douglas Dillon Chair in Governance Studies at the Brookings Institution, "Rebalancing American Federalism," The American Interest, March-April 2010, http://www.the-american-interest.com/article-bd.cfm?piece=787] JAKE LEE
Thinking along those lines warrants renewed emphasis today. **America's national government has had its hands full coping with a deep** and lingering **economic crisis and onerous security challenges around the world. It cannot,** or at any rate ought not, **keep piling on** top of **those daunting tasks** a second-tier agenda that injudiciously dabbles in too many decisions and duties best consigned to local entities. **Turning every** imaginable **issue into a Federal case, so to speak, diverts and polarizes political leaders at the national level, and erodes recognition of local responsibilities.** A kind of attention deficit disorder besets anybody who attempts to do a little of everything rather than a few important things well. Although not **a** root cause **of catastrophes like** the submersion of a historic American city by a hurricane in 2005, the terrorist attacks of **September 11,** 2001, **the great financial bust of 2008 or the** successful resurgence of the Taliban in Central Asia, **an overstretched and distracted government stands less chance of mitigating such tragedies.**

Impacts: Security Commitments

Plan's key to a division of labor that allows the US to effectively manage global security commitments

Nivola '07 –
(Pietro S. Nivola, Vice ¶ President and Director ¶ of Governance Studies ¶ at The Brookings ¶ Institution. Issues in Governance Studies, July 2007, Rediscovering Federalism, http://mavdisk.mnsu.edu/parsnk/2011-12/Pol680-fall11/POL%20680%20readings/federalism-wk%202/07governance_nivola.pdf)

This paper stipulates that **federalism can offer ¶ government a helpful division of labor**. The essay ¶ argues that **the central government in the United ¶ States has grown inordinately preoccupied with concerns ¶ better left to local authorities. The result is an ¶ overextended government, too often distracted from ¶ higher priorities**. To restore some semblance of so-called ¶ "subsidiarity"—that is, a more suitable delineation of ¶ competences among levels of government—the essay ¶ takes up basic principles that ought to guide that quest. ¶ Finally, the paper advances several suggestions for how ¶ particular policy pursuits might be devolved.¶ Whatever else it is supposed to do, a federal system ¶ of government should offer policy-makers a division of ¶ labor.1 Perhaps the first to fully appreciate that benefit was Alexis de ¶ Tocqueville. He admired the federated regime of the United States because, ¶ among other virtues, it enabled its central government to focus on primary ¶ public obligations ("a small number of objects," he stressed, "sufficiently ¶ prominent to attract its attention"), leaving what he called society's countless ¶ "secondary affairs" to lower levels of administration.2 **Such a system**, in other ¶ words, **could help officials in Washington keep their priorities straight. ¶ It is this potential advantage**, above all others, **that warrants renewed ¶ emphasis today**. **America's national government has its hands full coping with ¶ its continental, indeed *global, security responsibilities*, and cannot keep ¶ expanding a domestic policy agenda that injudiciously dabbles in too many ¶ duties best consigned to local authorities**. Indeed, in the habit of attempting to do ¶ a little of everything, rather than a few important things well, **our overstretched ¶ government suffers a kind of *a*ttention *d*eficit *d*isorder. Although this state of ¶ overload** and distraction obviously **is not a cause of catastrophes such as** the ¶ successful **surprise attacks of September 11**, 2001, the ferocity of the insurgency ¶ in **Iraq**, or the submersion of a historic American city inundated by a hurricane in ¶ 2005, **it may render such tragedies harder to prevent or mitigate**.

Effective engagement checks global nuclear war

Brooks, Ikenberry, and Wohlforth '13 (Stephen, Associate Professor of Government at Dartmouth College, John Ikenberry is the Albert G. Milbank Professor of Politics and International Affairs at Princeton University in the Department of Politics and the Woodrow Wilson School of Public and International Affairs, William C. Wohlforth is the Daniel Webster Professor in the Department of Government at Dartmouth College "Don't Come Home America: The Case Against Retrenchment," International Security, Vol. 37, No. 3 (Winter 2012/13), pp. 7–51)

A core premise of **deep engagement** is that it **prevents** the **emergence of** a far more **dangerous** global security **environment**. For one thing, as noted above, the **U**nited **S**tates' overseas **presence gives it** the **leverage to restrain partners from** taking **provocative action**. Perhaps more important, its core **alliance commitments** also **deter states** with aspirations to regional hegemony **from contemplating expansion** and make its partners more secure, reducing their incentive to adopt solutions to their security problems that threaten others and thus stoke security dilemmas. The contention that engaged **U.S. power dampens the** baleful **effects of anarchy** is consistent with influential variants of realist theory. Indeed, arguably the scariest portrayal of the war-prone world that would emerge absent the "American Pacifier" is provided in the works of John **Mearsheimer**, who **forecasts dangerous multipolar regions replete with security competition, arms races,** nuclear proliferation and associated preventive war temptations, regional rivalries, **and** even runs at regional hegemony and **full-scale great power war.** 72 How do retrenchment advocates, the bulk of whom are realists, discount this benefit? Their arguments are complicated, but two capture most of the variation: (1) U.S. security guarantees are not necessary to prevent dangerous rivalries and conflict in Eurasia; or (2) prevention of rivalry and conflict in Eurasia is not a U.S. interest. Each response is connected to a different theory or set of theories, which makes sense given that the whole debate hinges on a complex future counterfactual (what would happen to Eurasia's security setting if the United States truly disengaged?). Although a certain answer is impossible, each of these responses is nonetheless a weaker argument for retrenchment than advocates acknowledge. The first response flows from defensive realism as well as other international relations theories that discount the conflict-generating potential of anarchy under contemporary conditions. 73 Defensive realists maintain that the high expected costs of territorial conquest, defense dominance, and an array of policies and practices that can be used credibly to signal benign intent, mean that Eurasia's major states could manage regional multipolarity peacefully without the American pacifier. Retrenchment would be a bet on this scholarship, particularly in regions where the kinds of stabilizers that nonrealist theories point to—such as democratic governance or dense institutional linkages—are either absent or weakly present. There are three other major bodies of scholarship,

however, that might give decisionmakers pause before making this bet. First is regional expertise. Needless to say, there is no consensus on the net security effects of U.S. withdrawal. Regarding each region, there are optimists and pessimists. Few experts expect a return of intense great power competition in a post-American Europe, but many doubt European governments will pay the political costs of increased EU defense cooperation and the budgetary costs of increasing military outlays. 74 The result might be a Europe that is incapable of securing itself from various threats that could be destabilizing within the region and beyond (e.g., a regional conflict akin to the 1990s Balkan wars), lacks capacity for global security missions in which U.S. leaders might want European participation, and is vulnerable to the influence of outside rising powers. What about the other parts of Eurasia where the United States has a substantial military presence? Regarding the Middle East, the balance begins to swing toward pessimists concerned that states currently backed by Washington— notably Israel, Egypt, and Saudi Arabia—might take actions upon U.S. retrenchment that would intensify security dilemmas. And concerning East Asia, pessimism regarding the region's prospects without the American pacifier is pronounced. Arguably the principal concern expressed by area experts is that Japan and South Korea are likely to obtain a nuclear capacity and increase their military commitments, which could stoke a destabilizing reaction from China. It is notable that during the Cold War, both South Korea and Taiwan moved to obtain a nuclear weapons capacity and were only constrained from doing so by a still-engaged United States. 75 The second body of scholarship casting doubt on the bet on defensive realism's sanguine portrayal is all of the research that undermines its conception of state preferences. Defensive realism's optimism about what would happen if the United States retrenched is very much dependent on its particular—and highly restrictive—assumption about state preferences; once we relax this assumption, then much of its basis for optimism vanishes. Specifically, the prediction of post-American tranquility throughout Eurasia rests on the assumption that security is the only relevant state preference, with security defined narrowly in terms of protection from violent external attacks on the homeland. Under that assumption, the security problem is largely solved as soon as offense and defense are clearly distinguishable, and offense is extremely expensive relative to defense. **Burgeoning research across the** social and other **sciences**, however, **undermines that core assumption states have preferences** not only for security but also **for prestige, status, and other aims**, and they engage in trade-offs among the various objectives. 76 In addition, they define security not just in terms of territorial protection but in view of many and varied milieu goals. It follows that even states that are relatively secure may nevertheless engage in highly competitive behavior. Empirical studies show that this is indeed sometimes the case. 77 In sum, a bet on a benign postretrenchment Eurasia is a bet that leaders of major countries will never allow these nonsecurity preferences to influence their strategic choices. To the degree that these bodies of scholarly knowledge have predictive leverage, U.S. retrenchment would result in a significant deterioration in the security environment in at least some of the world's key regions. We have already mentioned the third, even more alarming body of scholarship. Offensive realism predicts that **the withdrawal of** the **America**n pacifier **will yield** either a **competitive** regional **multipolarity complete with** associated insecurity, arms racing, **crisis instability, nuclear proliferation, and** the like, or bids for regional hegemony, which may be beyond the capacity of local great powers to contain (and which in any case would generate intensely competitive behavior, possibly including regional **great power war**). Hence it is unsurprising that retrenchment advocates are prone to focus on the second argument noted above: that avoiding wars and security dilemmas in the world's core regions is not a U.S. national interest. Few doubt that the United States could survive the return of insecurity and conflict among Eurasian powers, but at what cost? Much of the work in this area has focused on the economic externalities of a renewed threat of insecurity and war, which we discuss below. Focusing on the pure security ramifications, there are two main reasons why decisionmakers may be rationally reluctant to run the retrenchment experiment. First, overall higher levels of conflict make the world a more dangerous place. Were Eurasia to return to higher levels of interstate military competition, **one would see** overall higher levels of military spending and innovation and a higher likelihood of competitive regional **proxy wars and arming of client states**—all of which would be concerning, in part because it would promote a faster diffusion of military power away from the United States. Greater regional insecurity could well feed proliferation cascades, as states such as Egypt, Japan, South Korea, Taiwan, and Saudi Arabia all might choose to create nuclear forces. 78 It is unlikely that proliferation decisions by any of these actors would be the end of the game: they would likely generate pressure locally for more proliferation. Following Kenneth Waltz, many retrenchment advocates are proliferation optimists, assuming that nuclear deterrence solves the security problem. 79 Usually carried out in dyadic terms, the debate over the stability of proliferation changes as the numbers go up. Proliferation optimism rests on assumptions of rationality and narrow security preferences. In social science, however, such assumptions are inevitably probabilistic. Optimists assume that most states are led by rational leaders, most will overcome organizational problems and resist the temptation to preempt before feared neighbors nuclearize, and most pursue only security and are risk averse. Confidence in such probabilistic assumptions declines if the world were to move from nine to twenty, thirty, or forty nuclear states. In addition, many of the other dangers noted by analysts who are concerned about the destabilizing effects of nuclear proliferation—including the risk of accidents and the prospects that some new nuclear powers will not have truly survivable forces—seem prone to go up as the number of nuclear powers grows. 80 Moreover, the risk of "unforeseen **crisis dynamics**" that **could spin out of control** is also higher as the number of nuclear powers increases. Finally, add to these concerns the enhanced danger of nuclear leakage, and a world with overall higher levels of security competition becomes yet more worrisome. The argument that maintaining Eurasian peace is not a U.S. interest faces a second problem. On widely accepted realist assumptions, acknowledging that U.S. engagement preserves peace dramatically narrows the difference between retrenchment and deep engagement. For many supporters of retrenchment, the optimal strategy for a power such as the United States, which has attained regional hegemony and is separated from other great powers by oceans, is offshore balancing: stay over the horizon and "pass the buck" to local powers to do the dangerous work of counterbalancing any local rising power. The United States should commit to onshore balancing only when local balancing is likely to fail and a great power appears to be a credible contender for regional hegemony, as in the cases of Germany, Japan, and the Soviet Union in the midtwentieth century. The problem is that China's rise puts the possibility of its attaining regional hegemony on the table, at least in the medium to long term. As Mearsheimer notes, "The United States will have to play a key role in countering China, because its Asian neighbors are not strong enough to do it by themselves." 81 Therefore, unless China's rise stalls, "the United States is likely to act toward China similar to the way it behaved toward the Soviet Union during the Cold War." 82 It follows that the United States should take no action that would compromise its capacity to move to onshore balancing in the future. It will need to maintain key alliance relationships in Asia as well as the formidably expensive military capacity to intervene there. The implication is to get out of Iraq and Afghanistan, reduce the presence in Europe, and pivot to Asia— just what the United States is doing. 83 In sum, **the argument that U.S. security commitments are unnecessary for peace is countered by a lot of scholarship**, including highly influential realist scholarship. In addition, the argument that Eurasian peace is unnecessary for U.S. security is weakened by the potential for a large number of nasty security consequences as well as the need to retain a latent onshore balancing capacity that dramatically reduces the savings retrenchment might bring. Moreover, switching between offshore and onshore balancing could well be difficult. Bringing together the thrust of many of the arguments discussed so far underlines the degree to which **the case for retrenchment misses the** underlying **logic of** the **deep engagement** strategy. By supplying reassurance, deterrence, and active management, **the United States lowers security competition** in the world's key regions, thereby **preventing** the emergence of **a hothouse atmosphere for** growing **new military capabilities**. Alliance ties dissuade partners from ramping up and also provide leverage to prevent military transfers to potential rivals. On top of all this, the United States' formidable military machine may deter entry by potential rivals. Current great power military expenditures as a percentage of GDP are at historical lows, and thus far other major powers have shied away from seeking to match top-end U.S. military capabilities. In addition, they have so far been careful to avoid attracting the "focused enmity" of the United States. 84 All of the world's most modern militaries are U.S. allies (America's alliance system of more than sixty countries now accounts for some 80 percent of global military spending), and the gap between the U.S. military capability and that of potential rivals is by many measures growing rather than shrinking. 85

Impacts: Environment

Federalism is key to strong environment policies—solves for warming

Butler and Harris 14 [Henry N. Butler is a George Mason University Foundation Professor of Law and Executive Director, Law & Economics Center, George Mason University School of Law., Nathanial J. Harris is a George Mason University School of Law, Class of 2013, and Law Clerk to The Honorable Harris L Hartz, United States Court of Appeals for the Tenth Circuit. The authors acknowledge the financial support of the Mercatus Center at George Mason University and the Law & Economics Center at George Mason University School of Law. Helpful and insightful comments from the referees are greatly appreciated. "SUE, SETTLE, AND SHUT OUT THE STATES: DESTROYING THE ENVIRONMENTAL BENEFITS OF COOPERATIVE FEDERALISM" 2014 http://www.law.gmu.edu/assets/files/publications/working_papers/1357.pdf] JAKE LEE

A centralized approach to environmental policy was favored by many environmentalists ¶ in the early years of the federal environmental law. One reason for this was a concern that the ¶ states would engage in a "race to the bottom" of environmental quality**. However, growing ¶ dissatisfaction with the centralized command-and-control policies eventually caused some scholars to question the reliance on top-down regulation.172** Eventually, scholars began to ¶ recognize that federalism could be used to improve the environmental policy.173 **Strong ¶ federalism in the environmental context promotes superior environmental policy because it ¶ prompts what economists call the matching principle. The matching principle states that "the size ¶ of the geographic area affected by a specific pollution source should determine the appropriate ¶ governmental level f**or responding to the pollution."174 This implies that whenever pollution or ¶ the effects of pollution is limited to a single state, there is little if any justification for federal ¶ regulation.175 **This also implies that the more authority states are given to determine policy ¶ environmental policy when the pollution is solely intrastate, the better the environmental policy. ¶ Applying the matching principle can improve environmental policy in three ways. First, it ¶ allows each state to experiment with different ways of regulating pollution.176 This dynamic ¶ process allows the states to adopt effective policies and quickly amend or reverse ineffective ¶ policies. Second, decentralized decision making can be more efficient than a centralized ¶ environmental policy, which prompts lobbying and environmental advocacy groups to dominate ¶ policy making that ignores economic consequences at the state and local levels.**177 Third, ¶ application of the matching principle can create jurisdictional competition—resulting in higher-¶ quality regulation.178 The current structure of U.S. environmental law does not follow the matching ¶ principle.179 **Many federal programs are contrary to these principles, including the CAA, CWA, ¶ and CERCLA.180 This aside, the U.S. framework for environmental regulation does exhibit some ¶ matching principle elements. In particular, the statutory schemes for the various environment**al ¶ laws frequently give states authority for regulation ranging from "primary enforcement ¶ responsibility" to authority with **federal approval.181 Regardless of the level of authority, federal ¶ review is usually required before federal funding is provided**.182 The CWA, CAA, CERCLA, and ¶ others expressly require that states be involved in the regulatory policy.183 As one example, the ¶ CAA requires the state to establish a state implementation plan to address air pollution and limits ¶ **the EPA's enforcement authority to circumstances when the state has violated the CAA and then ¶ has not remedied the violation in an adequate time frame with a new state plan**.184 Furthermore, ¶ states enjoy an indirect role in federal notice-and-comment rulemakings, where they can provide ¶ **influential guidance for regulators. This guidance is given when a state submits comments to ¶ federal regulators regarding rules that will impact the state. ¶ ¶**

Impacts: Yemen

Federalism is key to peace making in Yemen

Lewis 3/5 **[Alexandra Lewis is a researcher working on development, peace and conflict in Somalia and Yemen, with a focus on youth and violence. She is based out of the University of Leeds and has published extensively on themes of instability in Yemen. She has also taken on a number of commissioned research projects on Yemen, working for a variety of international and national governmental and non-governmental organisations. "Federalism as Peace-Building: Searching for Solutions to the Conflict in Yemen" March 5, 2014 http://www.e-ir.info/2014/03/05/federalism-as-peace-building-searching-for-solutions-to-the-conflict-in-yemen/] JAKE LEE**

In February 2014, th**e Yemeni Government, led by President Abed Rabbo Mansour Hadi, announced that its state would be re-structured a**ccording to a United Federal Republic system. **As I have recently outlined in an article for the World Politics Review (2014), this new system was introduced in the aftermath of a ten month National Dialogue Conference (NDC)** in an attempt to begin **to resolve decades of conflict** and insecurity **in Yemen, which had come to the** fore and arguably produced **civil-war-**like conditions in the aftermath of the 2011-2012 Arab Spring.¶ Anthony **Oberschall argues that federalism is a common peace-building solution** advanced in contexts affected by conflict (though more usually so where conflict is centred around ethnicity); but he notes that the track record of such solutions is problematic, and that it is difficult to generalise about their effectiveness (2007, p. 11). **Yemen's insecurity is determined by conflicting identities**, as well as by political and tribal allegiances, which have seen clashes erupt between the centre and the periphery, **and between the North and South of the country**. **Tensions** and mistrust between parties are rampant, and **federalism has been advanced symbolically as a promise of increased self-administration and freedom from authoritarianism** by the state to key players. After all, "**Federalism's** principal **advantage is** that each group" currently disputing **the legitimacy of the state** would have "a stake in government" and would also in principle "be able to protect and promote its own interests" under the new system (Basham, 2004). However, in practice, the federalisation of Yemen does little to redress persisting grievances and is already highly contested (Lewis, Yemen's Creation of Federal Republic Leaves Major Grievances Unresolved, 2014).¶ **Federalism is rapidly becoming a dominant approach to peacebuilding in contexts affected by protracted instability**, being advanced as a less extreme alternative to separatism (which, after all, "is an issue that concerns state sovereignty and territorial integrity just as it is one that concerns the fundamental principles upon which any state is founded" (Okojie, 2013, p. 415)**). In theory, federalism allows for power-sharing and offers** "a likely basis of an eventual political settlement" **in contexts like Yemen**, where "**intrastate conflicts escalate into violent sectarian struggles"** (Sisk, 2013, p. 7). In recent years, the successes and challenges associated with the federalisation of states according to ethnic/clan, religious, and political lines have been widely debated in terms of their potential to bring about national reconciliation in Somalia (Zoppi, 2013), Nigeria (Egbe, 2013), Iraq (Basham, 2004) and elsewhere. **However, what is often overlooked** is the reality that "**Federalism is a highly sophisticated form of democracy**", whereby "**Successful federalism presupposes the existence of a stable democratic order" that includes (1) "populations with a supportive**, or at least a congenial, political culture" (Basham, 2004) and, I would add, (**2) Governments that are amenable to the devolution of power.** By definition, conflict-affected states do not possess these qualities, and this does not bode **well for federalisation as a form of peace-building in Yemen.**

Yemen instability increases terrorism

Reuters 11 [Reuters is the world's largest international multimedia news agency, providing investing news, world news, business news, technology news, headline news, small business news, news alerts, personal finance, stock market, and mutual funds information available on Reuters.com, video, mobile, and interactive television platforms. Thomson Reuters journalists are subject to an Editorial Handbook which requires fair presentation and disclosure of relevant interests. "U.S. concerned about Yemen instability, Qaeda fight" March 22, 2011

http://www.reuters.com/article/2011/03/22/us-yemen-usa-gates-idUSTRE72L3CL20110322] JAKE LEE

(Reuters) - Defense Secretary Robert **Gates said on Tuesday he was concerned about instability in Yemen and its impact on the fight against terrorism but declined to s**ay **whether Yemen's leader should step down immediately**.¶ Yemen's President Ali Abdullah **Saleh, a U.S. ally in the fight against al Qaeda, is facing unrelenting anti-government protests and fresh defections among the ruling elite that are adding to pressure for him to resign after 32 years in power**.¶ Asked whether the United States still supported Saleh or if it was time for him to go, Gates said: "I don't think it's my place to talk about internal affairs in Yemen."¶ "**We are obviously concerned about the instability in Yemen**," Gates said during a trip to Russia.¶ **He added that the U**nited **S**tates **considered al Qaeda's Yemen-based branch, al Qaeda in the Arabian Peninsula** (AQAP) perhaps its most dangerous affiliate.¶ "And so instability and diversion of attention from dealing with AQAP is my primary concern about the situation," he said.¶ Western countries fear the political crisis could hasten **Yemen's slide into failed nation status, a potential windfall for AQAP which has already used Yemen to attempt attacks in Saudi Arabia and the U**nited **S**tates in the past two years.¶ Several generals and officials have abandoned **Saleh this week after a massacre of pro-democracy demonstrators on Friday,** as one of the most violent of the uprisings that have swept **the Arab world has pushed his administration to breaking point.**

[Insert Terrorism Impact]

Impacts: Iraq

Federalism is key to Iraq stability—in a civil war now

Khalilzad and Pollack 7/22 [Zachary Khalilzad was the United States ambassador to Afghanistan, Iraq, and the United Nations during the presidency of George W. Bush and the director of policy planning at the Defense Department from 1990 to 1992. Kenneth M. Pollack is a staff writer for the New Republic "How to Save Iraq" July 22, 2014 http://www.newrepublic.com/article/118794/federalism-could-save-iraq-falling-apart-due-civil-war] JAKE LEE

The most important thing to understand about **Iraq today is also the hardest**. The **country has fallen once more into civil war**, a recurrence of the civil war of 2006-2008. In 2007-2008, the **United States committed tremendous military and economic resources to pull Iraq out of that first instance of civil war.** This time around, Washington has made clear that it will not devote anything like the same resources and there is no other country that can.¶ All other things being equal, therefore, **the most likely future Iraqis face is a new civil war fought largely along the internal ethno-sectarian divisions of the country**. Towns and cities may change hands, but the broad frontlines could remain largely unchanged for years. Meanwhile, tens or hundreds of thousands will die in fruitless conflict.¶ The history of such civil wars demonstrates that there are really only three ways that they end. **The first is that one group wins. In the case of Iraq**, the Shi'a will have the best chance because **of their demographic weight**, but history has seen many civil wars in which numbers alone have proven inadequate to produce either a swift or even an eventual victory. **However, when one identity group does prevail, it typically does so in a brutal and bloody fashion**. Therefore, such an outcome should not be the goal of American policy.¶ A second possibility is partition. Neither the Sunni Arabs nor the Shi'a Arabs **of Iraq seem willing to share power in Iraq. Both might be willing to allow the Kurds to go their own way** (although Kirkuk could remain a stumbling block), but they seem equally determined to dominate the Arab lands of Iraq. **That suggests a long and costly civil war. Over time, both might come to realize that neither can conquer** the other outright, especially if both are receiving considerable outside assistance from neighboring states. In those circumstances, it might become possible to convince them to divorce from each other, separating into two different states as in Sudan and Yugoslavia.¶ Nevertheless, as those two examples suggest, partition is still likely to be difficult, bloody and a long time in coming. **There is a dangerous mythology taking hold in Washington that partition might be easy because Iraq** has since been sorted out into neat, **easily divided cantonments**. That is false. While there are far **fewer mixed towns and neighborhoods, they still exist**, and even the homogeneous towns and **neighborhoods remain heavily intermingled across** central **Iraq,** including in Baghdad. Moreover, both the Sunni and the Shi'a militias are claiming territory largely inhabited by the sects of the other. All of that indicates that it would probably take years of fruitless bloodshed to convince both the Sunni and Shi'a leaderships to agree to partition, let alone on where to divide the country.¶ The final possibility is the best—or perhaps just the least bad—is what the Obama administration is trying now: Engineering a new Iraqi government that Kurds, Shi'a and moderate Sunnis can all embrace, so that they can then wage a unified military campaign (with American support) against ISIS and the other Sunni militant groups. That needs to remain **Washington's priority until it fails because it is the best outcome for all concerned, including the United States.¶ Of course, this is also a long shot. It will not be enough just to depose Iraqi Prime Minister Nouri al-Maliki, anoint new leaders, and declare a national unity government**. What brought Iraq to this impasse is the fear in Iraq's periphery—the Sunnis, Kurds, and the Shi'a of the deep south—of the efforts by its center, literal and figurative, to oppress them. The leaders of these communities might agree to join a new government, but they are only going to be willing to make it work if there are far-reaching, structural changes in Iraq's political, military and economic systems to decentralize power, security and wealth from the center to the periphery.¶ In other words, they are only going to be willing to participate in a new Iraqi political process if there is real federalism.¶ ¶ **A federal solution would preserve the nominal unity of Iraq and some key functions of the central government**, but would decentralize the vast majority of powers and responsibilities from Baghdad to the provinces and regions.¶ For the moment, let's set aside the Kurds. **First, it is worth sketching out what federalism might mean for Arab Iraq. The keys would be both redistributing power from the central government to the provinces and regions, and redistributing power** within the central government to prevent the re-emergence of another overly powerful Prime Minister like

Maliki.¶ **Shifting power from the center to the periphery needs to start with money. The central government would retain** the function of redistributing oil wealth according to a new oil revenue sharing law. **Such a law would also apportion a certain percent of the funds to the federal government to perform its** (limited) **functions,** or might simply set parameters that would limit the extent to which the federal parliament could tap Iraq's oil revenues to pay for the activities of the federal government. **However, the exploration, production, and even export of hydrocarbons would belong to the provinces and regions.¶ A variety of other functions would also need to be divided up, with some migrating to the provinces and regions and others remaining with Baghdad**. For instance, the management of Iraq's power grid, its water resources (and therefore its agricultural policy), and its transportation network would likely remain with **the federal government**. On the other hand, education policy, housing, labor policy, and other similar functions would probably become the purview of the provinces and regions, and paid for by their own individual funds.¶ Security would be particularly tricky. Baghdad **would have to cede the maintenance of internal law** and order to the provinces and regions, which would be allowed to raise local forces to do so. **They would also have to receive a share of the federal budget**—proportionate to demographics, but wholly under the control of the provinces and regions—to fund their internal security units. However, one solution for external defense would be to assign this responsibility to the central government. **In this case, because the Iraqi Army will always retain the latent capacity to subjugate any or all of the provinces**, there will have to be a redistribution of power within Baghdad to make it difficult, if not impossible, for an **Iraqi Prime Minister to do so**. Alternatively, **some Iraqis argue that each federal region should maintain its own forces**, like the Peshmerga, and that the regions should then coordinate **their security** forces and activities **to ensure external security**.¶ Whichever path was followed, it would be critical to create checks and balances that would constrain the government's ability to employ Iraq's security forces to repress any of Iraq's communities. **The most useful but also the most ambitious step would be a constitutional amendment to shift the conduct of foreign affairs and national security** (including command of the Iraqi armed forces) from the prime minister to the president. The prime minister would retain control over domestic politics and economic policies, **and both would be subject to a limit of two terms in office.¶ Iraqi leaders also need to agree to implement constitutional provisions** (and enact reforms when necessary) to depoliticize the security services and enhance parliamentary oversight. **The constitution already includes significant checks and balances that have been circumvented. It requires parliamentary approval of senior appointments, namely the Army chief of staff**, his assistants, division commanders and above, and the director of the intelligence service. Laws are still needed to define the powers of the minister of defense (appointed by the president) and minister of interior (appointed by the prime minister), resubordinate Iraq's various military operations centers under the ministry of defense chain of command (they currently report directly to the prime minister), and specify the treatment of Iraq's hydrocarbon wealth in the non-Kurdish lands. Other constitutional amendments should redefine the appointment of Iraqi judiciary and election officials and should delegate control of local security forces and appointment of all provincial officials to the provincial and regional governments.¶ **The new government should also reestablish constitutional checks and balances on the premiership by enhancing the legislative powers of the parliament** (repealing the court ruling that restricts the power to present bills to the Cabinet and president), **restoring the independence of key institutions such as the central bank, election committee, media committee, and establishing the Supreme Federal Court. The future Cabinet should also have clear bylaws to regulate its work and the authorities of ministers.**

Iraq instability risk nuclear conflagration

Corsi 7 [Jerome Corsi is a Harvard Ph.D., is a WND senior staff reporter January 8, 2007 pg. http://worldnetdaily.com/news/article.asp?ARTICLE_ID=53669]JAKE LEE

If a broader war breaks out in Iraq, Olmert will certainly face pressure to **send the Israel military into the Gaza** after Hamas and into Lebanon after Hezbollah. If that happens, **it will only be a matter of time before Israel and the U.S. have no choice but to invade Syria. The Iraq war could quickly spin into a regional war, with Israel waiting on the sidelines ready to launch an air and missile strike on Iran that could include** tactical **nuclear weapons**. With Russia ready to deliver the $1 billion TOR M-1 surface-to-air missile defense system to Iran, military leaders are unwilling to wait too long to attack Iran. Now that Russia and China have invited Iran to join their Shanghai Cooperation Pact, will Russia and China sit by idly should the U.S. look

like we are winning a wider regional war in the Middle East? If we get more deeply involved in Iraq, **China may have their moment to go after Taiwan once and for all. A broader regional war could easily lead**

Impacts: War/Modeling

Impact is global war --- U.S. federalism is modeled worldwide, solving conflict

Steven G **Calabresi '95**., Assistant Prof – Northwestern U., Michigan Law Review, Lexis // GD
First, **the rules of constitutional federalism should be enforced because federalism is a good thing, and it is the best and most important structural feature of the U.S. Constitution**. Second, the political branches cannot be relied upon to enforce constitutional federalism, notwithstanding the contrary writings of Professor Jesse Choper. Third, the **Supreme Court is institutionally competent to enforce constitutional federalism**. Fourth, the Court is at least as qualified to act in this area as it is in the Fourteenth Amendment area. And, fifth, the doctrine of stare [*831] decisis does not pose a barrier to the creation of any new, prospectively applicable Commerce Clause case law. The conventional wisdom is that Lopez is nothing more than a flash in the pan. 232 Elite opinion holds that the future of American constitutional law will involve the continuing elaboration of the Court's national codes on matters like abortion regulation, pornography, rules on holiday displays, and rules on how the states should conduct their own criminal investigations and trials. Public choice theory suggests many reasons why it is likely that the Court will continue to pick on the states and give Congress a free ride. But, it would be a very good thing for this country if the Court decided to surprise us and continued on its way down the Lopez path. Those of us who comment on the Court's work, whether in the law reviews or in the newspapers, should encourage the Court to follow the path on which it has now embarked. The country and the world would be a better place if it did. We have seen that a desire for both **international** and devolutionary **federalism has swept across the world in recent years**. To a significant extent, **this is due to global fascination with and emulation of our own American federalism success story**. The **global trend toward federalism is an enormously positive development that greatly increases the likelihood of future peace, free trade, economic growth, respect for social and cultural diversity, and protection of individual human rights**. It depends for its success on the willingness of sovereign nations to strike federalism deals in the belief that those deals will be kept. 233 The U.S. Supreme Court can do its part to encourage the future striking of such deals by enforcing vigorously our own American federalism deal. Lopez could be a first step in that process, if only the Justices and the legal academy would wake up to the importance of what is at stake.

Federalism solves multiple theaters for war and conflict

Norman **Ornstein**, resident scholar in social and political processes at American Enterprise Institute, Jan-Feb **1992**. The American Enterprise, v3 n1 p20(5)// GD
No word in political theory more con¬sistently causes eyes to glaze over than "federalism." Yet no concept is more critical to solving many major political crises in the world right now. The **former Soviet Union**, Yugoslavia, Eastern and Western **Europe, South Africa**, Turkey, **the Middle East**, and Canada **are suffer¬ing from problems that could be solved,** if solutions are possible**, by instituting** creative forms of **federalism**. **Federalism is not a** sexy **concept like "democracy" or "freedom"; it describes a more mundane mechanism that bal¬ances the need for a central and coordi¬nating authority at the level of a nation-state**

with a degree of state and local autonomy, while also protecting minority interests, preserving ethnic and regional identification and sensibilities, and allow¬ing as much self-government as possible. Federalism starts with governing struc¬tures put in place by formal, constitu¬tional arrangements, but beyond that it is a partnership that requires trust. Trust can't be forged overnight by formal ar-rangements, but bad arrangements can exacerbate hostilities and tensions. Good ones can be the basis for building trust. **Why is federalism so important now?** There are political reasons: **the breakup of the old world order has re¬leased resentments and tensions that had been suppressed for decades or even cen¬turies**. Ethnic pride and self-identifica¬ tion are surging in many places around the globe. Add to this the easy availabil¬ity of weapons, and you have a potent mixture for discontent, instability, and violence. **There are also economic con¬siderations: simply breaking up existing nation-states into separate entities can¬not work when economies are inter¬linked in complex ways.** And **there are humane factors, too**. No **provinces or territories are ethnically pure.** Creating an independent Quebec, Croatia, or Kazakhstan would be uplifting for French Quebecois, Croats, and Kazakhs but terrifying for the large numbers of minorities who reside in these same territories. **The only way to begin to craft solu¬tions,** then, **is to create structures that preserve** necessary **economic links while providing economic independence**, to cr**eate political autonomy while preserv¬ing freedom** of movement and individual rights, **and to respect ethnic identity while protecting minority rights.** Each country has unique problems that require different kinds of federal structures, which can range from a federation that is tightly controlled at the center to a con¬federation having autonomous units and a loose central authority. The United States pioneered feder¬alism in its Union and its Constitution. **Its invention of a federation that bal¬anced power between a vigorous national government and its numerous states was every bit as significant an innovation as its instituting a separation of powers was in governance**—and defining the federal-state relationship was far more difficult to work out at the Constitutional Con¬vention in 1787. The U.S. federalist structure was, obviously, not sufficient by itself to elimi¬nate the economic and social disparities between the North and the South. De¬spite the federal guarantees built into the Constitution, the divisive questions of states' rights dominated political conflict from the beginning and resulted ulti¬mately in the Civil War. But **the federal system** did keep conflict from boiling over into disaster for 75 years, and it **has enabled the United States to keep its union together without constitutional cri¬sis or major bloodshed for the 125 years** since the conclusion of the War Between the States. It has also enabled us to me-liorate problems of regional and ethnic discontent. The American form of federalism fits the American culture and historical experience—it is not directly transfer¬able to other societies. But if **ever there was a time to apply the lessons that can be drawn from the U.S. experience or to create new federal approaches, this is it. What is striking is the present number of countries and regions where deep-seated problems could respond to a new focus on federalism.**

Federalism solves war

Steven G **Calabresi '95**., Assistant Prof – Northwestern U., Michigan Law Review, Lexis // GD

Small state **federalism** is a big part of what **keeps the peace in countries like the United States and Switzerland**. It is a big part of the reason why we do not have a Bosnia or a Northern

Ireland or a Basque country or a Chechnya or a Corsica or a Quebec problem. 51 American federalism in the end is not a trivial matter or a quaint historical anachronism. **American-style federalism is a thriving and vital institutional arrangement** - partly planned by the Framers, partly the accident of history - **and it prevents violence and war**. **It prevents religious warfare, it prevents secessionist warfare, and it prevents racial warfare**. **It is part of the reason why democratic majoritarianism in the United States has not produced violence or secession for 130 years**, unlike the situation for example, in England, France, Germany, Russia, Czechoslovakia, Yugoslavia, Cyprus, or Spain**. There is nothing in the U.S. Constitution that is more important or that has done more to promote peace, prosperity, and freedom than the federal structure of that great document.** There is nothing in the U.S. Constitution that should absorb more completely the attention of the U.S. Supreme Court.

Impacts: Modeling

US federalism will get modeled—it solves extinction

Calabresi 95 [Steven G. Calabresi is Associate Professor, Northwestern University School of Law. B.A. 1980, J.D. 1983, Yale "Reflections on United States v. Lopez: "A GOVERNMENT OF LIMITED AND ENUMERATED POWERS": IN DEFENSE OF UNITED STATES v. LOPEZ" December 1995 Lexis] JAKE LEE

The prevailing wisdom is that the Supreme Court should abstain from enforcing constitutional limits on federal power for reasons of judicial competence and because the Court should spend essentially all its political capital enforc-ing the Fourteenth Amendment against the states instead. This view is wrong. **First, the rules of constitutional federal-ism should be enforced because federalism is a good thing, and it is the best and most important structural feature of the U.S. Constitution. Second, the political branches cannot be relied upon to enforce constitutional federalism, not-withstanding the contrary writings of Professor Jesse Choper**. Third, the Supreme Court is institutionally competent to enforce constitutional federalism. Fourth, the **Court is at least as qualified to act in this area as it is in the Fourteenth Amendment area. And, fifth, the doctrine of stare [*831] decisis does not pose a barrier to the creation of any new, prospectively applicable Commerce Clause case law.**¶ The conventional wisdom is that **Lopez is nothing more than a flash in the pan.** n232 Elite opinion holds that the future of American constitutional law will involve the continuing elaboration of **the Court's national codes on matters like abortion regulation, pornography, rules on holiday displays, and rules on how the states** should conduct their own criminal investigations and trials. **Public choice theory suggests many reasons why it is likely that the Court will con-tinue to pick on the states and give** Congress a free ride. **But, it would be a very good thing for this country if the Court decided to surprise us and continued on its way down the Lopez path**. Those of us who comment on the Court's work, whether in the law reviews or in the newspapers, should encourage the Court to follow the path on which it has now embarked. The **country and the world would be a better place if it did.**¶ **We have seen that a desire for both international and devolutionary federalism has swept across the world in re-cent years. To a significant extent, this is due to global fascination** with and emulation of our own American federalism success story. The global trend toward federalism is an enormously positive development that greatly **increases the likelihood of future peace, free trade, economic growth, respect for social and cultural diversity, and protection of individual human rights. It depends for its success on the willingness of sovereign nations to strike federalism deals** in the belief that those deals will be kept. n233 The U.S. Supreme Court can do its part to encourage the future striking of such deals by enforcing vigorously our own American federalism deal**. Lopez could be a first step in that process, if only the Justices and the legal academy would wake up to the importance of what is at stake.**¶ ¶

Impacts: Fed key to Modeling

US federalism modeled

Tarr 2k5
(Alan, Chair of the Department of Political Science at Rutgers University "United States of America" appearing in John Kincaid and G. Alan Tarr, editors Constituional Origins, structure and change in federal democracies" McGill Queen's University Press, Montreal and Kingston: 2005 pg 382) GD
The United States of America is the world's oldest, continuing, modern federal democracy. Indeed, the framers of the United States Constitution are **widely regarded as the inventors of modern federalism**, as distinct from ancient forms of federalism, especially confederalism. **The US Constitution has been influential as a model of federal democracy, and key principles** of the Constitution - **such as federalism**, the separation of powers, an independent judiciary, and individual rights - **have gained acceptance worldwide.** Americans believe that the nation's success owes much to the brilliance of the Constiution's drafters. **Yet neither the Constitution, nor the federal polity it created, has remained static**. Amendments adopted after the Civil War (186 1 -65) altered the federal-state balance, and the authorization of a federal income tax in the Sixteenth Amendment (1913) greatly augmented the fiscal power of the federal government. The Constitution has also both influenced and been influenced by political and social developments, including the transformation of the United States from a few states hugging the Atlantic Coast to a continental nation and also from a country recently liberated from colonial rule to an economic and military superpower.

US domestic federalism modeled

London 2k
(Herbert, President of the Hudson Institute, London, President of the Hudson Institute and Professor Emeritus at NYU "The Enemy Within" April 1st, 2001 http://www.hudson.org/index.cfm?fuseaction=publication_details&id=1398&pubType=HI_Articles) GD
Fourth, the United States possesses a sense of moral universalism that exists nowhere else. **When one talks about** some sort of example**—a model of** human rights, **constitutionalism,** subsidiarity, **rule of law,** and property rights—**the United States stands alone. It is the model.** Not long ago several Hudson Institute scholars had the opportunity to spend some time in Indonesia, and **we found that Indonesia does not turn for its models to China or Japan; it looks to the U**nited **S**tates. **The new Indonesian president is very keen on establishing a form of federalism. What does he look to? The American Constitution.** Fifth and last**, the rest of the world looks to the United States for answers.** Very recently, an American deputy secretary of state said, "**Everyone's crisis is America's crisis." Why? Because the world looks to the United States as its model.** As a consequence, there is no question that the United States will maintain its extraordinary leadership.

Impacts: Fed key to Democracy

US leadership on federalism is essential to democracy worldwide

David **Broder**, Washington Post, June 24, 20**01**, "Lessons On Freedom." GD

Even more persistent were the questions about the role the United **S**tates **would play, under this new administration, in supporting democratic movements around the world**. It is sobering to be reminded how often, during the long decades of the Cold War, this country backed (and in some cases, created) undemocratic regimes, simply because we thought military rulers and other autocrats were more reliable allies against communism. The week of the Salzburg Seminar coincided with President Bush's first tour of Europe. He was a target of jokes and ridicule for many of the fellows as the week began. But the coverage of his meetings and, especially, his major address in Poland on his vision of Europe's future and America's role in it, earned him grudging respect, even though it remains uncertain how high a priority human rights and promotion of democracy will have in the Bush foreign policy. Another great lesson for an American reporter is that **the struggle to maintain the legitimacy of representative government in the eyes of the public is a worldwide battle.** Election turnouts are dropping in almost all the established democracies, so much so that seminar participants seriously discussed the advisability of compulsory voting, before most of them rejected it as smacking too much of authoritarian regimes. Political parties -- which most of us have regarded as essential agents of democracy -- are in decline everywhere. They are viewed by more and more of the national publics as being tied to special interests or locked in increasingly irrelevant or petty rivalries -- anything but effective instruments for tackling current challenges. One large but unresolved question throughout the week: Can you organize and sustain representative government without strong parties? The single most impressive visitor to the seminar was Vaira Vike-Freiberga, the president of Latvia, a woman of Thatcherite determination when it comes to pressing for her country's admission to NATO, but a democrat who has gone through exile four times in her quest for freedom. She is a member of no party, chosen unanimously by a parliament of eight parties, and bolstered by her popular support. But how many such leaders are there? Meantime, even as democracy is tested everywhere from Venezuela to Romania to the Philippines, a new and perhaps tougher accountability examination awaits in the supranational organizations. The European Union has operated so far with a strong council, where each nation has a veto, and a weak parliament, with majority rule. But with its membership seemingly certain to expand, **the age-old dilemma of democracy -- majority rule vs. minority and individual rights -- is bound to come to the fore. The principle of federalism will be vital to its success**. And, **once again, the U**nited **S**tates **has important lessons to teach. But only if we can keep democracy strong and vital in our own country.**

US Federalism

Impacts: Airpower/Space

Federalism is key to airpower and space program

Calabresi 95 [Steven G. Calabresi is Associate Professor, Northwestern University School of Law. B.A. 1980, J.D. 1983, Yale "Reflections on United States v. Lopez: "A GOVERNMENT OF LIMITED AND ENUMERATED POWERS": IN DEFENSE OF UNITED STATES v. LOPEZ" December 1995 Lexis] JAKE LEE

A third related advantage is that international federations can undertake a host of governmental activities in which there are significant economies of scale. **This is one reason why federations can provide better for the common defense than can their constituent parts. Intercontinental ballistic missiles, nuclear-powered aircraft** [*772] **carriers and sub-marines, and B-2 stealth bombers tend to be expensive. Economies of scale make it cheaper for fifty states to produce one set of these items than it would be for fifty states to try to produce fifty sets.** This is true even without factoring in the **North American regional tensions that would be created if this continent had to endure the presence of fifty nuclear minipowers, assuming that each small state could afford to own at least one Hiroshima-sized nuclear bomb. Important governmental economies of scale obtain in other areas, as well, however, going well beyond national defense. For ex-ample, there are important economies of scale to the governmental provision of space programs, scientific and biomedical research programs, the creation of transportation infrastructure, and even the running of some kinds of income and wealth redistribution programs.**

[Insert airpower and space colonization impact]

Impacts: War

Federalism solves war

Calabresi 95 [Steven G. Calabresi is Associate Professor, Northwestern University School of Law. B.A. 1980, J.D. 1983, Yale "Reflections on United States v. Lopez: "A GOVERNMENT OF LIMITED AND ENUMERATED POWERS": IN DEFENSE OF UNITED STATES v. LOPEZ" December 1995 Lexis] JAKE LEE

A first and obvious advantage is that consolidation reduces the threat of war. Because war usually occurs when two or more states compete for land or other resources, a reduction in the number of states also will reduce the likelihood of war. This result is especially true if the reduction in the number of states eliminates land boundaries **between states that are hard to police**, **generate friction and border disputes, and that may require large standing armies to defend.** In a brilliant article, Professor Akhil Amar has noted the importance of this point to both to the Framers of our Constitution and to President Abraham Lincoln. n52 Professor Amar shows that they believed a Union of States was essential in **North America because otherwise the existence of land boundaries would lead here - as it had in Europe - to the creation of standing armies and ultimately to war. n53 The Framers accepted the old British notion** that it was Britain's island situation **that had kept her free of war and, importantly, free of a standing army** that could be used to oppress the liberties of the people in a way that the British navy never could.¶

Impacts: Multilat

Federalism Solve Multilateralism

Calabresi 95 [Steven G. Calabresi is Associate Professor, Northwestern University School of Law. B.A. 1980, J.D. 1983, Yale "Reflections on United States v. Lopez: "A GOVERNMENT OF LIMITED AND ENUMERATED POWERS": IN DEFENSE OF UNITED STATES v. LOPEZ" December 1995 Lexis] JAKE LEE

These old geostrategic arguments for federalist consolidation obviously hold true today and played a role in the forming of the European Union, the United Nations, and almost every other multinational federation or alliance that has been created since 1945. Sometimes the geostrategic argument is expanded to become an argument for a multinational defensive alliance, **like NATO, against a destabilizing power, like the former Soviet Union. In this variation, international federalism is partly a means of providing for the common defense and partly a means of reducing the likelihood of intra-alliance warfare** in order to produce a united front against the prime military threat. Providing for the common defense, though, is itself a second and independent reason for forming international federations**. It was a motivation for the formation of the U.S. federation in 1787 and, more recently, the European Union.**

Impacts: Free Trade

Federalism key to free trade—NAFTA proves

Calabresi 95 [Steven G. Calabresi is Associate Professor, Northwestern University School of Law. B.A. 1980, J.D. 1983, Yale "Reflections on United States v. Lopez: "A GOVERNMENT OF LIMITED AND ENUMERATED POWERS": IN DEFENSE OF UNITED STATES v. LOPEZ" December 1995 Lexis] JAKE LEE

A fourth and vital advantage to international federations is that they can promote the free movement of goods and labor both among the components of the federation by reducing internal transaction costs and internationally by providing a unified front that reduces the costs of collective action when bargaining with other federations and nations. **This reduces the barriers to an enormous range of utility-maximizing transactions thereby producing an enormous increase in social wealth**. Many federations have been formed in part for this reason, including the **United States, the European Union, and the British Commonwealth, as well as all the trade-specific "federations" like the GATT and NAFTA**.

Impacts: Human Rights

Federalism key to Human Rights

Calabresi 95 [Steven G. Calabresi is Associate Professor, Northwestern University School of Law. B.A. 1980, J.D. 1983, Yale "Reflections on United States v. Lopez: "A GOVERNMENT OF LIMITED AND ENUMERATED POWERS": IN DEFENSE OF UNITED STATES v. LOPEZ" December 1995 Lexis] JAKE LEE

Sixth and finally, n56 an advantage to international federation is that it may facilitate the protection of individual human rights. For reasons Madison explained in the Federalist Ten, n57 **large governmental structures may be more sensitive than smaller governmental structures to the problems of abuse of individual and minority rights. n58 Remote federal legislatures or courts, like the U.S. Congress and Supreme Court, sometimes can protect important individual rights when national or local entities might be unable to do so. n59 As I have explained elsewhere, this argument remains a persuasive part of the case for augmented federal powers. n60**

Impacts: Devolution

Giving power to states enhances citizen participation

Zimmerman 2009 Joseph F., Professor of Political Science Rockefeller College "Congressional Devolution of Powers and Preemption of State Regulatory Powers: Countervailing Trends" Presented at the annual meeting of the American Political Science Association, Toronto, Ontario, Canada, September 5, 2009. http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1450981 // GD

Democratic theory in a republic is premised upon the establishment of responsibility to allow the electorate to hold public officers accountable for their failure to achieve mandated goals, to carry out their assigned responsibilities, or for commission of unethical acts. **Congressional devolution of power to states to regulate** pilots in marine ports or the business of insurance **does not cloud which plane of government is responsible for exercising regulatory authority**. Similarly, complete preemption statutes make the national government responsible for exercising regulatory authority with the exception of preemption statutes economically deregulating completely or partially airline, bus, electricity, financial services, motor truck transport, natural gas, and telecommunication firms.¶

Congressional devolution of powers, based upon the principle of subsidiarity, **has been beneficial to democratic control of governmental decision-making by facilitating citizen participation in the process of determining public policies.** Nevertheless, it must be admitted there is a negative side to devolution. The numerous statutes containing devolution provisions make it difficult for citizens to determine which government is responsible for certain functions. This confusion is most commonly attributable to savings clauses in preemption statutes. To date, Congress has failed to monitor closely state exercise of devolved powers to determine whether the powers should be amended or revoked. Only a detailed study of each devolution provision would allow the drawing of firm conclusions relative to their effectiveness in achieving their respective goal(s).

Congress has empirically devolved authority to states

Zimmerman 2009 Joseph F., Professor of Political Science Rockefeller College "Congressional Devolution of Powers and Preemption of State Regulatory Powers: Countervailing Trends" Presented at the annual meeting of the American Political Science Association, Toronto, Ontario, Canada, September 5, 2009. http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1450981 // GD

Several congressional preemption **statutes**, their implementing administrative rules and regulations, **and one** presidential **executive order devolve national powers to governors not granted to them by their respective state constitution or statutes. A governor of an eastern state wrote** to the author in 1986 that "**I don't think many students of federalism understand how important these changes are**, not only in an intergovernmental sense, but **to Governors themselves in the expansion of their responsibilities as chief executive within their respective States**."¶ **Governors are authorized to** (1) submit a plan to a federal department or agency (2) certify a required state plan, (3) certify compliance with a national requirement, (4) issue temporary permits allowing underground injection of a particular fluid, (5) request the waiver of the single state agency requirement, (6) **request state assumption of responsibility for a preempted regulatory function**, (7) designate a state department or agency as the state health planning and development agency for a preempted function, (8) appoint members of the Statewide Health Coordinating Council, (9) approve a required state highway safety program, (10) establish a system of end-use allocation for motor gasoline, (11) veto the U.S. Secretary of Energy's selection of site for a high-level radioactive waste facility in the state subject to a possible override by Congress, (12) request the United States Secretary of Transportation to prohibit travel by long vehicles on specified highways on safety grounds, (13) classify and reclassify areas of the state as air pollution attainment, nonattainment, or unclassifiable areas under the Clean Air Act, (14) petition the Environmental Protection Agency Administrator to establish an Ozone Transport Commission, and (15) order a National Guard member to perform active guard and reserve duty.

Russia Federalism

Impacts: Prolif

Russian Federalism is key to prevent prolif

Hahn 03 [Gordon M. Hahn is a visiting research scholar with the Hoover Institution at Stanford Uni- versity, political analyst for the Russian Journal, and the author of Russia's Revolution from Above, 1985-2000: Reform, Transition, and Revolution in the Fall of the Soviet Com- munist Regime (2002). "The Past, Present, and Future of the Russian Federal State" 2003 https://www.gwu.edu/~ieresgwu/assets/docs/demokratizatsiya%20archive/11-3_Hahn.PDF] JAKE LEE

Where **did Russia's federal state come from, where has it been, where is it going, and why does it matter beyond a small circle of Russia specialists? Taking the last question first, the success or failure of Russia's transformation into a stable market democracy will determine the degree of stability throughout Eura- sia.** For **such a large multinational state, successful political and economic devel- opment depends on building an efficient democratic federal system**. Indeed, one of the main institutional **factors leading to the demise of the Soviet partocratic regime and state was the considerably noninstitutionalized status of the RSFSR** (Russian Republic) **in the Soviet Union's pseudofederal, national-territorial administrative structure. Only a democratic federal system can hold together and effectively manage Russia's vast territory, the awkward administrative structure inherited from the failed USSR, and hundreds of divergent ethnic, linguistic, and religious interests.** Dissolution or even any further weakening of **Russia's feder- al state could have dire consequences for Russian national and international secu- rity by weakening control over its means of mass destruction.**

[Insert Prolif Impact Card]

Impacts: Genocide

Russia Federalism is key to prevent Genocide

Dugin 6 [Alexander Dugin is a political Scientist "RUSSIA'S FUTURE: A UNITARY STATE OR AN ETHNO-FEDERATION?" February 3, 2006 Lexis] JAKE LEE

Experts and political scientists were prompted to consider such questions by reforms to the hierarchy of governance in the course of 2005 - especially the abolition of elections for regional leaders. For example, Alexander Voloshin, former head of the presidential administration, **spoke about a possible scenario for transforming federative Russia into unitary Russia, noting that the ethnic republics**, as self-sufficient regions of the **Federation, are hotbeds of tension. Therefore, the process of expanding regions might end in erasing the borders of the ethnic republics. Meanwhile, Boris Nemtsov agreed with other Russian liberals in naming "the curtailment of federative principles and local government, leading to a unitary state**," among the negative trends of the past year. ¶ I'd agree with the liberal opposition here, but from a completely different standpoint - a Eurasian standpoint. **Russia as a unitary state would be the worst of all possible options, precisely because it would happen at the expense of genocide for the native ethnic groups comprising it. This genocide doesn't just threaten ethnic minorities that are assimilated into the majority people; it also threatens the majority people**, which loses its unique ethnic qualities, its native characteris-tics, originality, traditions; its members become mere citizens of the nation-state. Consequently, **Russia ought to take the federalist path, but with one substantial proviso: federalism should change from the territorial federalism** of today to ethno-federalism - **that is, a federation of ethnic groups, or Eurasian federalism.¶ The concept of ethno-federalism¶ The ethno-federalism concept of the state is based on the following notion: the political entity is an individual ethnos, or the whole assembly of ethnic groups within the Russian Federation. These ethnic groups are "detached" from the territories for not to create a precedent of a possible break-up of the Russian Federation. That means that the ethnos will form a political unity with self-government** and their own authorities and even judicial pluralism, but acting within **the framework of an ethnic group, not of a territory. In such state, for instance, the Tatars would be recognized as a political entity with a significant degree of language autonomy**, i.e. they would have the right to write and to speak their own language, cultivate their culture, **regardless of where they live. At the same time, there would be no such notion as Tatarstan: there would not be any quasi-state regime on the territory of the Eurasian Federation which would include other ethnic groups as well**. The refusal from the unitary state in this federal model takes place in all levels - **on the level of the all-federal system there would not be the unitary state, but on the level or regions there would not be anything - no republics, no regions organized according to that very same unitary principle.¶**

India Federalism

Impacts: Indo Pak War

India Federalism is key to prevent Indo-Pak war

PYE 8 [Lucian W. Pye studied Political Science at MIT, The State of India' Democracy, May/June http://www.foreignaffairs.org/20080501fashortreview87356/sumit-ganguly-larry-diamond-marc-f-plattner/the-state-of-india-s-democracy.html]JAKE LEE

This symposium volume brings together more than a dozen American and Indian scholars to evaluate the state of India's democracy. **It is standard practice to honor India by declaring it, without further analysis, to be the world's largest democracy. The authors of this volume, in contrast, take it as a given that there are many different versions of democracy and that India is a special case. They begin by analyzing India's party system and election results and how the relationship of politics to society leads to the management of ethnic conflicts. A key factor in the strength of Indian democracy is the country's successful federalism, the balance achieved between the central government and state and local authorities. Another key factor in India's democracy is its judiciary**. Overall, however, the success of Indian democracy is **very much determined by the country's civil society and the pride Indians take in their democratic institutions**. At **the same time, Indians are bothered by corruption in public affairs. The emergence of marginalized elements has further opened the door to graft.**

Extinction

Fai in '01 (Ghulam Nabi, Executive Director of the Kashmiri American Council, The Washington Times, "The Most Dangerous Place", July 8, Proquest)

The most dangerous place on the planet is Kashmir, a disputed territory convulsed and illegally occupied for more than 53 years and sandwiched between nuclear-capable India and Pakistan. It **has ignited two wars** between the estranged South Asian rivals in 1948 and 1965, **and a third could trigger nuclear volleys and a nuclear winter threatening the entire globe**. The United States would enjoy no sanctuary.

This apocalyptic vision is no idiosyncratic view. The director of central intelligence, the Defense Department, and world experts generally place Kashmir at the peak of their nuclear worries. Both India and Pakistan are racing like thoroughbreds to bolster their nuclear arsenals and advanced delivery vehicles. Their defense budgets are climbing despite widespread misery amongst their populations. Neither country has initialed the Nuclear Non- Proliferation Treaty, the Comprehensive Test Ban Treaty, or indicated an inclination to ratify an impending Fissile Material/Cut-off Convention.

Iraqi Federalism

Impacts: Iraq Stability

The US model of federalism is key to preventing instability in Iraq
Brancati 04 (Dawn, scholar at the Center for the Study of Democratic Politics at Princeton University, 7/21, "Can Federalism Stabilize Iraq?", http://muse.jhu.edu/journals/washington_quarterly/v027/27.2brancati.pdf)
The United States devoted nine months to planning the war in Iraq and a mere 28 days to planning the peace, according to senior U.S. military officials. Much more time has to be invested in the peace, however, if the military achievements of the war are to be preserved and a stable de- mocracy is to be created in Iraq. **Establishing a governmental system that can accommodate Iraq's different ethnic and religious groups**, previously kept in check by the political and military repression of the Saddam Hussein regime, **is paramount to securing that peace. In the absence of a system** uniquely designed toward this end, **violent conflicts and demands for inde- pendence are likely to engulf the country**. If not planned precisely to meet the specific ethnic and religious divisions at play, any democratic govern- ment to emerge in Iraq is bound to prove less capable of maintaining order than the brutal dictatorship that preceded it. By dividing power between two levels of government—giving groups greater control over their own political, social, and economic affairs while making them feel less exploited as well as more secure—federalism offers the only viable possibility for preventing ethnic conflict and secessionism as well as establishing a stable democracy in Iraq. Yet, not just any kind of federal system can accomplish this. Rather, **a federal system granting regional governments extensive political and financial powers with borders drawn along ethnic and religious lines that utilize institutionalized measures to prevent identity-based and regional parties from dominating the govern- ment is required**. Equally **critical to ensuring stability and sustainable democracy in Iraq,** the new federal system of government must secure the city of Kirkuk, coveted for its vast oil reserves and pipelines, in the Kurdish-controlled northern region to assure that the Kurds do not secede from Iraq altogether. For its part**, the United States must take a more active role in advising Iraqi leaders to adopt a federal system of government along these lines**. Such a system will help the United States not only to build democracy in Iraq but also to prevent the emergence of a Shi'a-dominated government in the country. **Without this form of federalism, an Iraq rife with internal conflict and dominated by one ethnic or religious group is more likely to emerge, un- dermining U.S. efforts toward establishing democracy in Iraq as well as the greater Middle East.**

Iraq war spills over into World War III
Corsi 07 (Jerome R, PhD in Political Science from Harvard, 1/8. "War with Iran is imminent", http://www.wnd.com/2007/01/39593/)
Ahmadinejad himself is the third leader in this drama who may well be on a short leash. Having just lost a round of local elections throughout Iran, Ahmadinejad finds himself facing once again student protests in the street. Ahmadinejad h**as pursued nuclear weapons and funding terrorist groups including Hezbollah and now also Hamas,** rather than keeping his campaign promise to return oil wealth to the people of Iran. The Iranian parliament has moved up the date for the presidential election by one year. Now, with Supreme Leader Khamanei dying of cancer, there may soon be a fight in the Assembly of Experts to see if former president Rafsanjani can wrest control away from Ahmadinejad and his spiritual leader Ayatollah Hasbah-Yazdi, a chief

adherent of the belief that the Twelfth Imam, the Mahdi, will soon come out of the well from centuries-long occlusion to lead Shi'ite Islam in worldwide triumph. The one **wild card that would change the equation would be an aggressive move by Iran. Should Iran launch a cruise missile at a U.S. Navy ship in the Gulf, we will have war right now**. Should an Iranian missile sink a U.S. carrier, the U.S. population would experience another 9/11 moment. **At that point, a massive U.S.-led military strike on Iran would become inevitable.** Would President Bush provoke Iran to make just such a move? A pre-emptive strike on Iran would never be approved by a Democratic Congress, but **U.S. massive retaliation for a serious act of war by Iran would be a totally different matter.** Truthfully, **we are already at war with Iran**. My concern stems from the realization that the internal politics in Iran may be such that Ahmadinejad cannot allow a massive U.S. military build-up in the region without making some kind of a response. **With Iraq's borders as open as is our southern border with Mexico, Iran has now sent into Iraq a sufficient number of terrorists and arms to create a real civil war**. Muqtada al-Sadr's Mahdi militia, which featured so prominent in the Shi'ite rejoicing that reduced Saddam's hanging to a partisan event, is an Iran-funded creation. Ahmadinejad cannot afford to see a strengthened U.S. military destroy Muqtada al-Sadr's Mahdi army. If a broader **war breaks out in Iraq**, Olmert will certainly **face pressure to send the Israel military into the Gaza after Hamas and into Lebanon after Hezbollah. If that happens, it will only be a matter of time before Israel and the U.S. have no choice but to invade Syria. The Iraq war could quickly spin into a regional war, with Israel waiting on the sidelines ready to launch an air and missile strike on Iran that could include tactical nuclear weapons. With Russia ready to deliver the $1 billion TOR M-1 surface-to-air missile defense system to Iran, military leaders are unwilling to wait too long to attack Iran**. **Now that Russia and China have invited Iran to join their Shanghai Cooperation Pact, will Russia and China sit by idly should the U.S. look like we are winning a wider regional war in the Middle East? If we get more deeply involved in Iraq, China may have their moment to go after Taiwan once and for all. A broader regional war could easily lead into a third world war, much as World Wars I and II began.**

AT: Aff Args

AT: Sebelius

Sebelius ruling won't have any discernible effect on existing Federalism

Erin **Ryan**. Fall, **2014.** University of Colorado Law Review. 85 U. Colo. L. Rev. 1003. "THE SPENDING POWER AND ENVIRONMENTAL LAW AFTER SEBELIUS". B.A. 1991 Harvard-Radcliffe College, cum laude M.A. 1994 Wesleyan University J.D. 2001 Harvard Law School, cum laude. Erin Ryan teaches environmental and natural resources law, property and land use, water law, negotiation, and federalism. She has presented at academic and administrative venues in the United States, Europe, and Asia, including the Ninth Circuit Judicial Conference, the U.S.D.A. Office of Ecosystem Services and Markets, and the United Nations Institute for Training and Research // GD

In the immediate wake of the Sebelius decision, legal analysts were most interested in the fact that a majority of the Court had rejected the government's view that the ACA was constitutionally authorized under Congress's commerce power.22 Policy analysts were most concerned about the practical implications of the new commerce power jurisprudence for other programs of cooperative federalism. But **even setting aside questions about the precedential value of the Commerce Clause analysis** (given that the Chief Justice's only supporters wrote in dissent),23 **the practical implications for existing governance are likely to be small, at least in the foreseeable future**. After all, much of the debate over the individual mandate focused on how unprecedented it was: despite months of effort, nobody produced a satisfying example of a similar legislative tool used in previous health, environmental, or any other kind of federal law.

Decentralization key to Env.

A Decentralized Government is key to decision making in environment policies
Pursley 13 [Garrick B. Pursley Assistant Professor, The University of Toledo College of Law. "Unblocking Cooperative Energy Governance" 2013 http://www.law.northwestern.edu/searlecenter/conference/energy/] JAKE LEE
The potential pathologies of full decentralization of regulatory authority should give us pause. First, the scalability problem persists—there still will be variation in the preferences of sub-state locations to which statewide measures cannot fully respond18—"the most populous states are very large in size and . . . [t**]heir decisionmaking largely sacrifices the benefits of decentralization[ ] because these states are seeking to govern a diverse population that will have very heterogeneous preference**s."19 **Second, with the smaller scale of state-level politics comes a more constrained vision, likely, tailoring state policy to** a narrower and more parochial set of interests that may exclude important priorities that would be on the table in nation-wide political negotiations. **The classical objection is that interest groups that favor lax environmental regulation and have high individual stakes in regulatory outcomes—paradigmatically industry groups—tend to be small and cohesive**, but groups favoring stricter environmental regulation tend to be more diffuse and less organized.20 **This disparity in political power, from the perspective of economies of scale in political organization and advocacy of the two camps**, is exacerbated at the state and local government levels.21 Diffuse environmental interests may muster the resources to organize and act within a single political forum, but organizing at multiple state or government locations would be too taxing upon their relatively undisciplined and typically under-funded infrastructures.22 **Interests favoring laxer regulation, by contrast, are thought to possess relatively greater capacity to organize and advocate in multiple government forums and thus enjoy a comparative** advantage.23 **Comparative institutional analysis thus suggests that federal environmental authority is preferable to state or local authority because the federal level is the most efficient receiver of broadly shared but often under-organized public** interests in environmental protection, which are needed to counterbalance industrial interests **that would otherwise dominate the political process and impose their narrow interests on the unwitting public.24**

Centralization Fails

Trying to be a centralized government fails—empirics prove

Alder 2 [Jonathan H. Alder is an Assistant Professor of Law, Case Western Reserve University School of Law. This chapter is adapted from the report Let Fifty Flowers Bloom: Transforming the States Into Laboratories of Environmental Policy, published by the American Enterprise Institute in January 2002, available at http://www.federalismproject.org/masterpages/environment/flowers.pdf.] JAKE LEE

Despite the widespread call for "reinvention" of environmental policy, there has been relatively little progress. EPA's efforts have only "operat[ed] at the margin," according to the NAPA, and are "far from impressive."55 There is much discussion of how to improve environmental policy, but there is little movement toward meaningful reform at the federal level. Partisan infighting and regulatory inertia discourage all but the **most meager regulatory changes. In the end, "nearly all recent efforts to reinvent environmental regulation** in the United States have come to little more than a tinkering with specific elements of a highly complex system."56 The highest profile effort to "reinvent" environmental policy under the Clinton **Administration was "Projec tXL."Announcedin1995,ProjectXLwas supposed to encourage "excellence and leadership" in environmental policy. To accomplish this goal, companies and communities were given the opportu- nity to substitute compliance with existing environmental regulations with al- ternatives provided that the regulated entities could demonstrate that they were achieving "superior" environmental performance. Project XL aimed to foster experimental approaches to environmental protection as well as to accommo- date situations in which the application of general environmental requirements¶ of environmental policy, ProjectX** Lfailedtoproduceanysignificantresults.57 EPA styled Project XL as a "laboratory" approach **to environmental reinvention that would authorize up to 50 pilot projects nationwide. In each case, EPA would grant additional regulatory flexibility in return for "superior environmental performance." From the start Project XL was hobbled by a lack of statutory authorization. EPA purported to offer companies relief from exist- ing regulatory requirements, including paperwork and monitoring burdens**, without any legal authority to do so.58 Waiver provisions in existing environ- mental statutes were simply too narrow or restrictive to accommodate XL pro- posals.59 The lack of formal authorization made "**stakeholder" participation a paramount concern, as any XL initiative that sought to liberalize existing rules** could be held hostage by an outside interest group threatening to sue.60 This threat made corporate executives skittish about pushing too far, and discour- **aged more innovative efforts.61 It also amplified other problems in the initia- tive, such as how to define what constituted "superior environmental perfor- mance"orw hether EPA or local regulators** had greater authority to direct given projects. Early enthusiasm from regulated industries and state officials for the program quickly soured.62 Absent statutory authorization, **there was only so much XL could accomplish.63 Project XL sought to involve all parties involved in environmental policy**, in- cluding corporations, environmental groups, and state and local officials. Other reinvention efforts focused solely on the federal-state relationship. **One exam- ple is the National Environmental Performance Partnership System (NEPPS) launched in 1995. Under NEPPS, EPA and the various state environmental agencies pledged to seek to clarify their respective roles, develop new means of measuring environmental performance**, and allow greater state in put in to prior- ity-setting. EPA and individual state agencies could enter into "Performance Partnership Agreements" to set new enforcement priorities and focus enforce- ment resources where they would be most effective. While some 38 states en- tered into such agreements, the results were limited.64 As with Project XL**, NEPPS' problems included existing statutory and regulatory requirements that limit innovation, "reluctance by EPA regulators to reduce oversight," and "the inherent difficulty in 'letting go' on the part of some regulators**."65 Other ana- lysts agree that despite modest success in some areas, NEPPS "appears to be languishing**—essentially from a lack of not only clarity but commitment."66 Congress' reinvention record to date is no more impressive. With the**

excep- tion of the Safe Drinking Water Act,67 none of the major environmental statutes that impose substantial obligations on the states has been reformed in the past decade.68 Despite numerous proposals to "fix" the major environmental stat- utes, reform efforts stalled, often amid partisan acrimony. Those reforms that did pass, such as the Unfunded Mandates Reform Act69 and the Congressional Review Act,70 were exceedingly modest and barely affected existing programs at all.

AT: Cooperative Federalism

Cooperative Federalism is hurting jobs and the manufacturing sector

Forbes 12 [James Randy Forbes is an American politician. A member of the Republican Party, Forbes is the U.S. Representative for Virginia's 4th congressional district, serving since 2001 "Regulations Hurting Our Economy" http://forbes.house.gov/news/email/show.aspx?ID=HKZLUBBLFMXJ7WY276A6VICK2E] JAKE LEE

In response to these **federal regulations, I have supported the Clean Water Cooperative Federalism Act to prohibit the EPA from imposing new federal pollutant standards on states in which the Agency** has already approved state standards. This bill would allow communities to work with the Commonwealth, rather than Washington D.C., to ensure that unique economic and environmental needs are being taken into account. **In addition, I sent a letter to the EPA urging the Agency to provide more information to communities** on how the government plans to implement and enforce these new standards. Without transparency in this process, these regulations increase uncertainty for Virginia's employers, stifling job creation and threatening job loss.¶ **Manufacturers in the paper and foresting industry will be especially hard hit by new EPA emissions standards or Maximum Achievable Control Technology (MACT) standards.** Any manufacturing company that uses boilers, process heaters, or incinerators would be adversely affected. However, this regulation will also hit schools, hospitals, and an enormous number of mid-to-large scale manufacturers. Compliance will require the installation of expensive new mitigation technologies like scrubbers, fabric filters and replacement burners. **The EPA estimates that these new standards would have initial capital costs of $5.4 billion with annualized costs of nearly $1.5 billion. In response, I have cosponsored the EPA Regulatory Relief Act (H.R. 2250) to block the Boiler MACT standards from taking effect and give the EPA 15 months to reexamine and re-promulgate new standards** with an achievable compliance deadline. ¶ I am fighting to save jobs that could be lost as a result of new EPA emissions standards. The EPA has issued a new rule for the emissions standards of power plants or "electric generating units." These new standards require lower emissions of mercury and other air toxins, and are primarily targeted at coal power plants that have a higher output of mercury. Compliance with the new standards requires significant investment, often prohibitively expensive, resulting in the expected closure of a number of coal plants nation-wide. **These closures include the Dominion Power Plant in Chesapeake resulting in a loss of 145 jobs**. I have supported the Transparency in **Regulatory Analysis of Impacts on the Nation (TRAIN) Act (H.R. 2401) to require cumulative analysis of EPA rules like the Utility MACT**.¶ New EPA emissions standards for the manufacturing of cement are expected to affect approximately 100 cement plants nationwide. **Increased costs and regulatory uncertainty in the cement market could result in thousands of American jobs being moved overseas. The EPA estimates that these new standards will cost over $2 billion for the industry and reports show that these standards have already delayed the creation of new jobs**. Titan America, one of the largest cement companies in the Eastern United States, employs 1,500 people in **Virginia, with 112 of them working in Virginia's Fourth District. I am fighting to save these vital jobs by supporting the Cement Sector Regulatory Relief Act (H.R. 2681) to require further analysis of this costly new regulation.** ¶

Cooperative creates a race to the bottom—hurts the economy

Reisinger, Dougherty and Moser 10 [Will Reisinger is a Staff Attorney for the Ohio Environmental Council and Member of its Ohio ¶ Environmental Law Center. J.D., Ohio Northern University; B.A., Emory & Henry College. ¶ Trent A. Dougherty is a Director of Legal Affairs for the Ohio Environmental Council and Director of the ¶ Ohio Environmental Law Center. J.D., Capital University Law School; B.A., Ohio State ¶ University. ¶ Nolan Moser is a Director of Clean Air & Energy Programs, the Ohio Environmental Council. J.D., ¶ Case Western Reserve University; B.A., Austin College. "ENVIRONMENTAL ENFORCEMENT AND THE ¶ LIMITS OF COOPERATIVE FEDERALISM: ¶ WILL COURTS ALLOW CITIZEN SUITS TO ¶ PICK

UP THE SLACK?" 2010
http://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=1048&context=delpf] JAKE LEE
Cooperative federalism inherently allows a "race to the bottom," ¶ **with regard to lax enforcement,149 setting up what has been called a** ¶ **"perverse" regulatory scheme.150 States do not have incentives, in the** ¶ **form of federal dollars,** to enforce the laws, and, at the same time they ¶ face economic and political pressure to weaken regulations. ¶ **Meanwhile, the federal government is unable or unwilling to exercise** ¶ **its backup enforcement power**. **Therefore, the cooperative federalist model relies on states to enforce the laws, with no federal "carrots" or** ¶ **"sticks" to encourage or compel them to do so.** ¶ **Congress intended that citizen** litigation would take up the slack ¶ in times such as these when economic and political obstacles **made** ¶ **government enforcement ineffective, and unable to enforce the laws.** ¶ **Today provides just such a situation, and citizens must be allowed and** ¶ **encouraged to participate in the enforcement of the laws that protect** ¶ **their health and natural resources**. Recent history supports—and the ¶ nation's deepening economic crisis reinforces—our argument that we ¶ **cannot rely on the cooperative federalist enforcement model to** ¶ **ensure compliance with environmental laws**.